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PROJET DE LOI. N° 136
BILL 136

MÉMOIRE DES CRIS SOUMIS À L'ASSEMBLÉE NATIONALE

CREE SUBMISSION TO THE NATIONAL ASSEMBLY

SOUMIS PAR LE GRAND CONSEIL DES CRIS (EEYOU ISTCHEE) / ADMINISTRATION RÉGIONALE CRIE

SUBMITTED BY THE GRAND COUNCIL OF THE CREES (EEYOU ISTCHEE) / CREE REGIONAL AUTHORITY

18 août 2000
August 18, 2000

Mémoire des Cris soumis à l'Assemblée nationale concernant le projet de loi N° 136 / Cree Submission to the National Assembly respecting Bill 136

TABLE DES MATIÈRES/
TABLE OF CONTENTS

Projet de loi N° 136 /
Mémoire des Cris soumis à l'Assemblée nationale 1

Bill 136 /
Cree Submission to the National Assembly 2

Declaration dated July 15, 1998 (*Lord* proceedings) 3

Motion for Interlocutory Injunctions and Other Provisional
Remedies dated July 6, 1999 (*Lord* proceedings) 4

Motion for an Interlocutory Injunction
dated July 28, 1999 (*Lord* proceedings) 5

PROJET DE LOI N° 136
MÉMOIRE DES CRIS SOUMIS À L'ASSEMBLÉE NATIONALE

1. INTRODUCTION

Nous exprimons nos remerciements aux membres du Comité parlementaire de la Commission de l'économie et du travail pour l'opportunité qui nous est offerte d'exprimer notre point de vue sur le projet de loi n° 136, *Loi modifiant la Loi sur les forêts et d'autres dispositions législatives* (ci-après "projet de loi 136").

Le 30 mai 2000, l'honorable ministre des Ressources naturelles, monsieur Jacques Brassard, a présenté devant l'Assemblée Nationale, le projet de loi 136. Ce projet de loi ignore les droits ancestraux et issus de traités constitutionnalisés de la Nation crie. Ce projet de loi viole les dispositions de la Convention de la Baie James et du Nord québécois (ci-après "CBJNQ"), la Constitution du Canada, ainsi que la *common law*. Il s'agit là d'une contradiction fondamentale avec des textes internationaux de base de droits humains comme la *Déclaration universelle des droits de l'homme*, le *Pacte international relatif aux droits économiques, sociaux et culturels* et le *Pacte international relatif aux droits civils et politiques*.

Comme vous le savez, nous sommes présentement engagés dans un important débat judiciaire contre les gouvernements du Canada et du Québec et quelque 26 compagnies forestières concernant le régime forestier et son applicabilité à Eeyou Istchee. Nous faisons les présentes représentations sous toutes réserves et sans préjudice aux procédures judiciaires pendantes devant la Cour supérieure du Québec portant les numéros 500-05-004330-906, 500-05-017463-934, 500-05-043203-981 et 500-05-052483-995 ainsi que les procédures judiciaires pendantes devant la Cour fédérale du Canada sous les numéros T-962-89, T-1913-90 et T-3007-93 de même qu'à la position des parties demanderesses dans lesdites procédures.

Depuis au moins 1980, la Nation crie a fait des représentations formelles et consistantes auprès du gouvernement du Québec, du ministre responsable des forêts, du ministre responsable de l'environnement, leurs agences et employés, afin que les dispositions de la CBJNQ de même que nos droits ancestraux et issus de traités

constitutionnalisés soient respectés et implantés dans la législation et les pratiques forestières. En dépit de plus de 20 ans de représentations formelles, de participations à des réunions, d'engagements dans des prétendues "consultations" et d'efforts pour faire valoir nos points de vue par toutes les avenues disponibles, le gouvernement continue d'adopter une législation forestière qui ignore les droits fondamentaux ancestraux et issus de traités.

Durant cette longue période de temps, nos efforts concertés ont été perpétrés par une variété d'institutions, dont:

1. Le bureau du Grand Chef des Cris;
2. Les Nations cries de Mistissini, Nemaska, Oujé-Bougoumou, Waskaganish et Waswanipi et leurs chefs et conseils;
3. Le bureau du directeur exécutif du Grand Conseil des Cris;
4. L'Administration régionale crie, l'ARC-MERN et d'autres groupes de travail de l'Administration régionale crie;
5. COMEX et COMEV;
6. Le Comité consultatif sur l'environnement de la Baie James;
7. Le groupe de travail cri sur la foresterie ("*Cree Forestry Working Group*").

Ces groupes, entre autres choses, ont fourni une énorme quantité de documents au gouvernement concernant les impacts de la foresterie sur notre peuple, nos droits et la CBJNQ, le tout sans aucun effet.

Une fois de plus, nous exprimons nos inquiétudes à l'effet que le gouvernement continue de légiférer inconstitutionnellement, tout en mettant en place un régime de gestion forestière qui porte atteinte à l'environnement et à notre mode de vie et qui contrevient à la CBJNQ.

2. LA CONVENTION DE LA BAIE JAMES ET DU NORD QUÉBÉCOIS EN BREF

Nous avons ratifié la CBJNQ le 11 novembre 1975. Puis, la *Loi sur le règlement des revendications des autochtones de la Baie James* et la *Loi approuvant la Convention de la Baie James et du Nord québécois* ont été adoptées. La CBJNQ

était précédée d'une entente de principe (EDP) qui fut ratifiée le 15 novembre 1974. Les principes et concepts de base de cette EDP continuent de s'appliquer à ses signataires, à moins qu'ils n'entrent en conflit avec les dispositions de la CBJNQ. En fait, le Traité adopte en grande partie l'EDP.

Le but du chapitre 24 de la CBJNQ est de reconnaître et d'affirmer nos droits d'exploitation et de reconnaître et d'affirmer la priorité de ces droits ainsi que de prévoir la conservation de la ressource faunique dont nous dépendons. Le mot "conservation" est défini au chapitre 24 de la CBJNQ comme comportant la protection des espèces en voie de disparition et la priorité de nos droits d'exploitation. La définition se lit comme suit:

> 24.1.5 *"conservation"*, la recherche de la productivité naturelle optimale de toutes les ressources vivantes et la protection des éco-systèmes du territoire dans le but de protéger les espèces menacées et d'assurer principalement la perpétuation des activités traditionnelles des autochtones et en second lieu, la satisfaction des besoins des non-autochtones en matière de chasse et de pêche sportives.

L'intention recherchée par les parties à la Convention était que le mode de vie Eeyou, sa culture, ses pratiques, ses valeurs et ses traditions continueraient et seraient protégés par la Convention. La CBJNQ comporte ce but fondamental et prévoit expressément cette continuation et protection. Toutefois, les pratiques forestières au Québec violent ce principe et menacent à la fois l'environnement et notre mode de vie.

Le chapitre 22 de la CBJNQ protège notre utilisation du territoire et nos droits d'exploitation contre les impacts négatifs du développement, incluant le développement forestier. Cette protection est accomplie à travers le processus obligatoire d'évaluation et d'examen des répercussions sur l'environnement et le milieu social prévu à la Convention. L'Annexe 1 du chapitre 22 de la CBJNQ prévoit que "l'exploitation sylvicole" est automatiquement soumise au processus d'évaluation dans les cas suivants:

(a) Grandes routes d'accès construites pour l'exploitation des forêts.
(b) Usines de pâte et de papier ou autres usines reliées aux activités forestières.
(c) En général, tout changement appréciable dans l'utilisation des terres qui influe de façon sensible sur une superficie de plus de vingt-cinq milles carrés (25 mi^2).

L'octroi de CAAFs, la préparation, la soumission, l'approbation et la mise en oeuvre des plans généraux d'aménagement, des plans quinquennaux d'aménagement et de plusieurs permis annuels, tous "autorisés" par la *Loi sur les forêts*, sont compris dans la catégorie de "tout changement appréciable dans l'utilisation des terres qui influe de façon sensible sur une superficie de plus de vingt-cinq milles carrés (25 mi^2)". Jusqu'à maintenant, puisque le gouvernement du Québec refuse de mettre en oeuvre ses obligations constitutionnelles qui résultent de la CBJNQ, aucun des CAAFs, plans d'aménagement ou permis, n'a été évalué, tel que requis par la Convention.

L'Annexe 2 du chapitre 22 de la CBJNQ prévoit que l'exploitation sylvicole est exemptée du processus d'évaluation seulement lorsqu'elle fait partie de plans de gestion approuvés par le gouvernement. Cette exemption est assujettie aux dispositions de l'alinéa 22.3.34 de la CBJNQ, le développement étant alors étudié par le Comité consultatif sur l'environnement de la Baie de James. Les CAAFs ne constituent pas un plan de gestion approuvé par le gouvernement. En fait, il n'y a jamais eu de plans de gestion approuvés par le gouvernement au sens de l'Annexe 2. Il n'existe donc pas d'exemption légale au processus d'évaluation complet pour le développement forestier.

3. L'IMPACT DES OPÉRATIONS FORESTIÈRES SUR EEYOU ISTCHEE

Eeyou Istchee est sacré pour nous. Il a été le centre de notre société, de notre culture, de nos valeurs spirituelles et de notre économie depuis des temps immémoriaux et il continue de l'être. C'est notre chez nous, notre passé et notre avenir. Il est l'identité de notre Peuple. Encore une fois, il fait face à un danger grave qui ne cesse de s'accroître à cause de la foresterie.

La législation forestière et les conséquences des activités et opérations de nombreuses compagnies forestières qui oeuvrent dans Eeyou Istchee affectent substantiellement les habitats fauniques et nos activités et droits traditionnels protégés par la Constitution. De par sa législation, le gouvernement porte atteinte à nos droits humains, ancestraux et issus de traités, ce qui inclut notamment nos droits de chasse, de pêche et de trappage (droits d'exploitation).

Le régime du gouvernement et les pratiques forestières qui en résultent n'ont aucune conscience de la fragilité de la forêt boréale qui couvre Eeyou Istchee. Effectivement, le régime forestier fait la promotion et ferme les yeux sur plusieurs pratiques industrielles qui sont inappropriées et qui causent des dommages environnementaux et sociaux considérables à notre territoire traditionnel et à notre culture. Par exemple:

a. des politiques forestières qui reflètent de façon inadéquate le taux de régénération de la forêt nordique et des pratiques qui font défaut d'assurer un taux adéquat de régénération suivant des coupes importantes ou des coupes à blanc;

b. la construction, l'utilisation, la maintenance et ultérieurement l'abandon inadéquates de routes et de camps;

c. des zones tampons inadéquates et des opérations inappropriées de machineries lourdes qui résultent en une perturbation et une dégradation majeure du sol, entraînant conséquemment de l'érosion et la détérioration de la qualité de l'eau, le dépôt de contaminants dans les cours d'eau ainsi que des dommages à la faune aquatique et aux habitats riverains;

d. de sévères impacts sociaux, économiques et environnementaux ayant un effet négatif sur nos activités d'exploitation par le biais d'une éviction de notre Peuple en fait et en pratique d'une large portion de nos territoires de chasse et de nos lignes de trappe;

e. la coupe de vastes sections d'habitats fauniques productifs dans certains territoires de chasse et lignes de trappe qui se traduit en un impact social et économique déterminant pour des chasseurs et des trappeurs cris et leurs personnes à charge;

f. des changements importants dans l'exploitation des espèces et la diminution de la diversité biologique après des coupes importantes ou des coupes à blanc;

g. le développement des routes forestières qui accroît l'accessibilité à Eeyou Istchee faisant ainsi de la faune sauvage une cible plus facile pour les chasseurs et les pêcheurs sportifs et mettant ainsi en péril la population faunique;

h. la perturbation excessive des habitats et abris d'hiver des orignaux;

i. l'interférence avec le flot naturel des eaux dans les cours d'eau à cause des zones tampons trop minces, ce qui fait en sorte que les arbres sont abattus par le vent dans les cours d'eau, et la construction incorrecte de routes lorsque celles-ci croisent des cours d'eau, causée, entre autres, par des ponts ou des ponceaux inadéquatement installés et de dimension trop restreinte, ce qui perturbe la migration des poissons, ce qui réduit et change ainsi la population des poissons, et ce qui empêche ou réduit notre accès à des eaux navigables;

j. la perturbation et la protection inadéquates des animaux aquatiques à fourrure, des animaux terrestres à fourrure et des oiseaux aquatiques ainsi que la destruction de leurs habitats respectifs;

k. la réduction du bois de chauffage disponible et l'augmentation à l'exposition du facteur vent à proximité de nos camps sur nos territoires de chasse et lignes de trappe, les rendant ainsi inutilisables ou plus difficilement utilisables dans la poursuite de nos activités d'exploitation;

l. l'augmentation du vol et du vandalisme à notre équipement et matériel nécessaires pour nos activités d'exploitation dans nos camps et nos caches.

Le régime forestier québécois a entraîné le dépouillement de quelque 12 000 kilomètres carrés de notre terre entre 1973 et 1998. La coupe excessive continue à un rythme inacceptable de quelque 550 kilomètres carrés par année. Les effets sont catastrophiques et tant la législation que les pratiques forestières sont des violations claires à des instruments internationaux environnementaux comme la *Convention sur la biodiversité* et *RAMSAR*.

4. LES PROCÉDURES JUDICIAIRES DES CRIS INTENTÉES AFIN DE PROTÉGER NOS DROITS CONTRE LES PRATIQUES ET LA LÉGISLATION FORESTIÈRES

Nous avons intenté plusieurs procédures judiciaires afin de protéger nos droits constitutionnels, notre mode de vie et l'environnement contre la dévastation causée par la foresterie.

Le Québec est bien au courant des questions juridiques soulevées dans chacun des dossiers qui sont tous présentement devant les tribunaux. La *Loi sur les forêts* actuelle et la législation provinciale qui y est reliée sont présentement clairement contestées puisque illégales et inconstitutionnelles. En fait, la Cour supérieure du Québec a déjà déterminé que la législation et les pratiques forestières du gouvernement ont systématiquement violé nos droits issus de la CBJNQ. Malgré le fait que ces causes demeurent sous l'étude des tribunaux, le gouvernement a passé en toute vitesse la *Loi 105* et ce, en ignorant complètement nos droits, tel que l'exigent la CBJNQ et la Constitution. La *Loi 105* est conséquemment inconstitutionnelle et illégale. Maintenant, le gouvernement présente un autre projet de loi qui est tout aussi inconstitutionnel et illégal. D'autres procédures judiciaires sont d'ailleurs envisagées.

Nous joignons en annexe de ce Mémoire des copies des procédures *Mario Lord* pour votre information et votre compréhension.

5. LE PROJET DE LOI 136

La ministre défendeur a déposé un document intitulé *Des forêts en héritage* au même moment où il introduisait le projet de loi 136 devant l'Assemblée nationale. Ce document comporte différentes admissions, notamment:

a. la planification prévue par la législation forestière du Québec ne garantit pas l'amélioration de la production forestière;

b. la supervision et le contrôle du gouvernement sur les activités forestières sont complètement inadéquats.

Malgré l'admission de ces problèmes, le projet de loi 136 propose l'augmentation de l'exploitation forestière. Le projet donne aussi au ministre défendeur un large pouvoir unilatéral et discrétionnaire qui affecte nos droits constitutionnels sans égard à la structure requise par la loi pour l'exercice de cette discrétion. Le projet de loi 136 crée un régime forestier gouverné par décret ministériel.

Sous le nouveau projet de loi 136, la discrétion ministérielle, mal définie et non structurée, comprend la possibilité d'établir des unités d'aménagement pour l'exploitation et autres opérations et activités forestières. Dans ces unités d'aménagement, le ministre peut unilatéralement déterminer, entre autres, la possibilité annuelle de coupe. Le projet de loi propose aussi que le ministre peut unilatéralement établir et modifier une limite nord du territoire pour l'exploitation et ce, en dépit des impacts sévères immédiats et négatifs qu'une telle limite a sur notre Peuple, notre territoire et nos droits.

Les directives explicites de la Cour suprême du Canada sont à l'effet que la législation qui autorise la discrétion ministérielle qui affecte substantiellement des droits ancestraux et issus de traités doit être prudemment taillée sur mesure afin d'éviter la violation de ces droits. Néanmoins, le projet de loi 136 prévoit illégalement que le ministre lui-même détermine par le biais de sa propre politique comment il structurera sa discrétion lorsqu'il consultera les Premières Nations.

Le projet prévoit aussi que la réglementation adoptée par le gouvernement peut être adaptée afin de réconcilier les activités d'aménagement forestier avec les activités des autochtones à des fins alimentaires, rituelles ou sociales. Le ministre peut aussi imposer l'application de différentes normes d'aménagement forestier afin de faciliter la conciliation des activités d'aménagement forestier avec les activités poursuivies par

les communautés autochtones à des fins alimentaires, rituelles ou sociales. Ces deux pouvoirs discrétionnaires ne tiennent aucunement compte de notre droit de récolte commerciale de la faune et de la flore protégé par notre Traité. Ils ignorent aussi le fait que selon la loi, nous devons consentir à tout changement à la CBJNQ.

En bref, le projet de loi 136 ignore complètement le régime établi sous la CBJNQ qui protège nos droits, notre mode de vie et l'environnement. L'action unilatérale du gouvernement du Québec par laquelle il légifère sur la foresterie à travers des instruments comme le projet de loi 136 ne prend pas en considération son obligation constitutionnelle de consulter de façon significative les autochtones et d'obtenir notre consentement pour modifier le Traité. Les garanties du Traité sont substantielles. L'intention du Traité n'était pas de créer des promesses vides de sens. Le Traité nous assure que nous pouvons continuer de pratiquer notre mode de vie traditionnel d'une façon moderne si nous le désirons. Le Québec a violé cette garantie substantielle depuis les 25 dernières années. Le projet de loi 136 perpétue cette violation ouverte, déterminée et systématique de nos droits constitution-nellement protégés. Il fait la promotion du dépouillement industriel de notre environnement et la destruction de notre mode de vie. Ce projet doit être retiré.

Le Québec doit remplir ses obligations légales envers nous tel que lui imposent la CBJNQ et la loi. Le gouvernement doit respecter la CBJNQ de façon à ce que nous élaborions ensemble un régime qui permet un développement sensible de la ressource forestière de Eeyou Istchee et qui permet aussi la protection de nos droits, de l'environnement, de notre structure sociale et de notre économie.

Le développement de Eeyou Istchee qui est sensible, équitable et qui respecte l'environnement est bienvenu. Nous rejetons et nous nous opposons avec véhémence aux actions unilatérales qui créent une parodie de pratiques forestières viables et qui violent nos droits.

BILL 136
CREE SUBMISSION TO THE NATIONAL ASSEMBLY

1. INTRODUCTION

We express our thanks to the members of the Parliamentary Committee of the Commission de l' Économie et du Travail for this opportunity to submit our views on *Bill 136, an Act to amend the Forest Act and other legislative provisions (Bill 136).*

On May 30, 2000, the Honourable Minister of Natural Resources, Jacques Brassard, introduced Bill 136 to the National Assembly. This proposed legislation ignores the constitutional aboriginal and Treaty rights of the Cree Nation. It violates the provisions of the *JBNQA,* the constitution of Canada and the common law. It is in fundamental contradiction to such basic international human rights documents as the Universal Declaration on Human Rights, the Covenant on Civil and Political Rights and the Covenant on Social and Economic Rights.

As you are aware we are currently engaged in extensive litigation against the governments of Canada and Québec and some 26 forestry corporations regarding the forestry regime and its applicability to Eeyou Istchee. We make this presentation under reserve of and without prejudice to the legal proceedings pending in the Superior Court of Québec under the numbers 500-05-004330-906, 500-05-017463-934, 500-05-043203-981 and 500-05-052483-995 and the legal proceedings pending in the Federal Court of Canada under the numbers T-962-89, T-1913-90 and T-3007-93 and the positions of Plaintiffs therein.

Since at least 1980 the Cree Nation has made consistent, formal representations to the Government of Québec, the Minister responsible for forests, the Minister responsible for the environment, their agencies and employees in an attempt to have the provisions of the JBNQA and our constitutional aboriginal and Treaty rights respected and implemented in forestry legislation and practice. Despite more than 20 years of making formal submissions, attending meetings, engaging in alleged "consultations" and making our views known through all

available avenues, the government continues to adopt forestry legislation that ignores our fundamental aboriginal and Treaty rights.

Our efforts have been made through a variety of bodies over this lengthy period of time, including:

1. The office of the Grand Chief of the Crees;
2. The Cree Nations of Mistissini, Nemaska, Oujé-Bougoumou, Waskaganish and Waswanipi and their Chiefs and Councils;
3. The office of the Executive Director of the Grand Council of the Crees
4. The Cree Regional Authority, the CRA-MERN and other CRA working groups;
5. COMEX and COMEV;
6. The James Bay Advisory Committee on the Environment;
7. The Cree Forestry Working Group.

These groups, among others, have provided an enormous number of documents to the government regarding the impacts of forestry on our people, our rights and the JBNQA, all to no avail.

We once again voice our concern that the government continues to legislate unconstitutionally and to create forest management regimes that harm the environment and our way of life and breach the JBNQA.

2. AN OUTLINE OF THE JAMES BAY AND NORTHERN QUÉBEC AGREEMENT (JBNQA)

We executed the JBNQA on November 11, 1975. It was followed by *An Act approving the Agreement concerning James Bay and Northern Québec*, and the *James Bay and Northern Québec Native Claims Settlement Act*. The JBNQA was preceded by an Agreement-in-Principle (the AIP) which was executed on November 15, 1974. The basic concepts and principles agreed to in the AIP continue to apply

to its signatories, except where they conflict with the provisions of the JBNQA. Indeed that Treaty adopts much of the AIP.

The purpose of Section 24 of the JBNQA is to recognize and affirm our harvesting rights and to recognize and affirm the priority of those rights and to provide for the conservation of the wildlife resources on which we depend. Conservation is defined under Section 24 of the JBNQA as incorporating the protection of endangered species and the priority of our harvesting in the following terms:

> . . . the pursuit of the optimum natural productivity of all living resources and the protection of the ecological systems of the Territory so as to protect endangered species and to ensure primarily the continuance of the traditional pursuits of the Native people, and secondarily the satisfaction of the needs of non-Native people for sport hunting and fishing.

The parties to the Agreement intended that the Eeyou way of life, culture, practices, values and traditions would continue and be protected through the Agreement. The JBNQA has that fundamental purpose and expressly provides for that continuation and protection, yet the practice of forestry in Québec violates this principle and threatens both the environment and our way of life.

Section 22 of the JBNQA protects the exercise of our use of the land and harvesting rights against the negative impacts of development, including forestry development. This protection is achieved through the Agreement's mandated process of environmental and social impact assessment. Schedule I of Section 22 of the JBNQA provides that "forestry" in the following categories are automatically subject to assessment:

a. major access roads built for extraction of forest projects;
b. pulp and paper mills or other forestry plants;

c. in general, any significant change in land use substantially affecting more than 25 square miles.

The awarding of CAAFs, the drafting, submission, approval and implementation of general management plans, 5 year management plans and many annual permits, all "authorised" by the *Forest Act*, fall within the definition of any significant change in land use substantially affecting more than 25 square miles. Yet, because the government of Québec refuses to implement its constitutional obligations under the JBNQA, none of the CAAFs, plans or permits have ever been assessed as required.

Schedule 2 of Section 22 of the JBNQA says that forestry development is only exempt from the requirement for impact assessment when it is included in governmental approved management plans. This in turn is subject to the provisions of paragraph 22.3.34 of the JBNQA and development then requires review by the James Bay Advisory Committee on the Environment. The CAAF do not constitute governmental approved management plans. In fact there never has been forestry development included in governmental approved management plans within the meaning of Schedule 2. Thus no legal exemptions for full environmental and social review of forest development exist.

3. FORESTRY IMPACTS ON EEYOU ISTCHEE

Eeyou Istchee is sacred to us. It has been central to our society, our cultural and spiritual values and our economy since time immemorial and it continues to be so. It is our home, our past and our future. It is who we are as a People. Yet it is in grave and increasing danger due to forestry.

Forestry legislation and the consequent operations and activities of numerous forest companies operating in Eeyou Istchee have detrimentally affected the wildlife habitats and our traditional, constitutionally guaranteed rights and activities. Through

its legislation the government has breached our human, aboriginal and Treaty rights including our hunting, fishing and trapping (harvesting) rights.

The government's regime and resulting forest practices have no consideration for the fragile boreal forest that covers Eeyou Astchee. Indeed the regime condones and promotes many unsound industrial practices which cause extensive environmental and social damage to our traditional land and our culture. Examples include:

a. logging practices which inadequately reflect the growth rate of northern forests and practices which fail to ensure proper rates of re-stocking following clear-cutting or extensive cutting;
b. the improper construction, use, maintenance and later abandonment of roads and camps;
c. inadequate buffer strips and the inappropriate operation of heavy equipment resulting in major soil disturbance and degradation and consequent erosion and deterioration of water quality, the deposit of contaminants into waterways, and damage to riparian and watercourse habitats;
d. severe negative social, economic and environmental impacts on our harvesting activities through actual or virtual eviction of our People from large portions of our hunting territories and traplines;
e. cutting of vast sections of the productive animal habitat in certain hunting territories and traplines, resulting in severe social and economic effects for individual Cree hunters and trappers and their dependants;
f. changes in harvested species and decreased biological diversity after clear-cutting or extensive cutting;
g. the development of forestry roads which increases accessibility to Eeyou Astchee, making wildlife an easier target for sport hunting and fishing and threatening their numbers;
h. excessive disruption of moose winter habitat and shelter;
i. interference with natural water flow in watercourses through excessive blowdown of trees in narrow buffer strips along watercourses and construction

of improper stream crossings, such as undersized or poorly installed bridges and culverts, thereby disturbing fish migration, reducing and changing fish populations and inhibiting or preventing our access to navigable waters;

j. disturbance of and inadequate protection for fur-bearing aquatic animals, terrestrial fur-bearing animals and waterfowl and destruction of their respective habitats;

k. reduced availability of firewood and increased wind chill exposure at and around our camps on hunting territories and traplines, rendering them unfit or less fit for the pursuit of harvesting activities;

l. widespread theft and vandalism at camps and caches to equipment and material necessary for harvesting.

Québec's forestry regime caused the denudation of some 12,000 km^2 of our land between 1973 and 1998. Excessive cutting continues at the unacceptable rate of some 550 km^2 per year. The effects are catastrophic and both forestry legislation and forestry practices are in clear violation of international environmental instruments such as the *Convention on Biodiversity* and *RAMSAR*.

4. CREE LEGAL ACTION TO PROTECT OUR RIGHTS AGAINST FORESTRY LEGISLATION AND PRACTICE

We have filed several court actions to protect our constitutional rights, way of life and the environment from the devastation caused by forestry:

Québec is well aware of the legal issues raised in each of these cases which are all currently before the courts. The current *Forest Act* and related provincial legislation are clearly impugned as illegal and unconstitutional. Indeed the Superior Court of Québec has already deemed the government to have systematically violated our rights under the JBNQA with its forestry legislation and practices. Despite the fact that all these cases remain the subject of judicial scrutiny the government rushed through Law 105 in complete disregard of our rights, the

demands of the JBNQA and the constitution. Law 105 is consequently unconstitutional and illegal. Now the government presents another Bill that is equally unconstitutional and illegal. Further litigation is likely.

We have appended copies of the *Mario Lord* case to this submission for your information and understanding.

5. BILL 136

The Defendant Minister released a document entitled *Des forêts en héritage* at the same time as Bill 136 was introduced in the National Assembly. This document makes numerous admissions including:

a. Québec's legislated forest planning does not guarantee the maintenance or amelioration of forest production;

b. government's monitoring and control of forestry activities is completely inadequate.

Despite these admitted problems Bill 136 proposes to increase forest harvesting. It also grants the Defendant Minister new, wide-ranging, unilateral discretionary powers that will affect our constitutional rights without any of the structure required by law for the exercise of that discretion. Bill 136 creates a forest regime governed by Ministerial fiat.

Under Bill 136 new, ill defined and improperly structured Ministerial discretion includes the ability to establish management units for logging and other forestry operations and activities. Within those units the Minister may unilaterally determine such matters as the annual allowable cut. The Bill similarly proposes that the Minister be able to unilaterally establish and modify a northern territorial limit for logging, despite the severe and immediate negative impacts such a limit has on our People, our land and our rights.

There are explicit demands from the Supreme Court of Canada that legislation authorising Ministerial discretion which substantially affects aboriginal and Treaty rights must be carefully tailored to avoid infringing those rights. Nonetheless Bill 136 illegally proposes that the Minister himself determine through policy how he is to structure his discretion when consulting with Native Peoples.

The Bill also provides that regulations made by the government may be adapted to reconcile forest management activities with the activities pursued by Native persons for food, ritual or social purposes. The Minister may also impose the application of different standards of forest management to assist the conciliation of forest management activities with the activities pursed by a Native community for food, ritual or social purposes. Both provisions completely disregard our Treaty right to commercially harvest fauna and flora. They also ignore the fact that by law we must consent to any change to the JBNQA.

In short Bill 136 completely ignores the regime established under the JBNQA to protect our rights, our way of life and the environment. Unilateral action by the government of Québec to legislate with regard to forestry through such instruments as Bill 136 ignores the constitutional requirement to meaningfully consult with us and to obtain our consent to modify the Treaty. The guarantees of the JBNQA are substantive guarantees. The Treaty was not intended to create hollow promises. The Treaty assures us that we may continue to practice our traditional way of life in a modern fashion should we desire to do so. Québec has violated this substantive guarantee for the past 25 years. Bill 136 continues this open, continuous and flagrant violation of our constitutionally guaranteed rights. It promotes the industrial despoilation of our environment and the destruction of our way of life. It must be withdrawn.

Québec must fulfil its legal obligations to us under the JBNQA and the law. The government must respect the JBNQA so that we may jointly fashion a regime that allows sensible development of the forest resources of Eeyou Istchee while protecting our rights, environment, social structure and economy.

We welcome the sensible, equitable and environmentally sound development of Eeyou Istchee. We reject and vehemently oppose unilateral action that makes a mockery of sustainable forestry practices and that breaches our rights.

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
No.: 500-05-043203-981

SUPERIOR COURT

MARIO LORD, of Waswanipi, Québec, J0Y 3C0, one of the Ndoho Ouchimauch and Ndoho Eenouch listed in the annexed Schedule I

-and-

CHIEF JOHN KITCHEN, of Waswanipi, Québec, J0Y 3C0 suing personally and, in conjunction with Plaintiff Grand Chief Matthew Coon Come, on behalf of and as a representative of the Ndoho Ouchimauch and Ndoho Eenouch listed in the annexed Schedule I under the heading Cree Nation of Waswanipi, as well as on behalf of the other members of the Cree Nation of Waswanipi

-and -

CHIEF GEORGE WAPACHEE, of Nemaska, Québec, J0Y 3B0, suing personally and, in conjunction with Plaintiff Grand Chief Matthew Coon Come, on behalf of and as a representative of the Ndoho Ouchimauch and Ndoho Eenouch listed in the annexed Schedule I under the heading Nemaska First Nation, as well as on behalf of the other members of the Nemaska First Nation

-and-

CHIEF-DR. BILLY DIAMOND, of Waskaganish, Québec, J0M 1R0, suing personally and, in conjunction with Plaintiff Grand Chief Matthew Coon Come, on behalf of and as a representative of the Ndoho Ouchimauch and Ndoho Eenouch listed in the annexed Schedule I under the heading Waskaganish First Nation, as well as on behalf of the other members of the Waskaganish First Nation

-and-

FORMER CHIEF WILLIAM MIANSCUM, of Mistissini, Québec, G0W 1C0, suing personally and, in conjunction with Plaintiff Grand Chief Matthew Coon Come, on behalf of and as a representative the Ndoho Ouchimauch and Ndoho Eenouch listed in the annexed Schedule I under the heading Cree Nation of Mistissini

-and-

CHIEF KENNY LOON, of Mistissini, Québec, G0W 1C0, Chief of the Cree Nation of Mistissini, suing personally and as chief and on behalf of the other members of the Cree Nation of Mistissini

-and-

CHIEF ABEL BOSUM, of Oujé-Bougoumou, Québec, G0W 3C0, suing personally and, in conjunction with Plaintiff Grand Chief Matthew Coon Come, on behalf of and as a representative of the Ndoho Ouchimauch and Ndoho Eenouch listed in the annexed Schedule I under the heading Oujé-Bougoumou Cree Nation, as well as on behalf of the other members of the Oujé-Bougoumou Cree Nation

- and-

GRAND CHIEF MATTHEW COON COME, of Mistissini, Québec, G0W 1C0, Grand Chief and Chairman of Plaintiffs the Grand Council of the Crees (Eeyou Istchee) and the Cree Regional Authority, suing personally and on behalf of and as a representative of the Ndoho Ouchimauch and Ndoho Eenouch listed in the annexed Schedule I, in conjunction with the above-mentioned chiefs and former chief, and suing as well on behalf of and as a representative of the members of the Cree Nation (James Bay Crees) and on behalf of the Cree Nation in Québec

-and-

VIOLET PACHANOS, of Chisasibi, Québec, J0M 1E0, Deputy Grand Chief, Executive Chief and Vice Chairman of Plaintiffs the Grand Council of the Crees (Eeyou Istchee) and the Cree Regional Authority, suing personally, in her foregoing capacities, and as the alternate to the Grand Chief in respect to the persons listed in the annexed Schedule I

-and-

THE CREE NATION OF WASWANIPI (BAND), a Cree First Nation and a band of Crees forming part of the Cree Nation as well as a band corporation incorporated under the *Cree-Naskapi (of Quebec) Act*, with its band office in Waswanipi, Québec, J0Y 3C0

-and-

THE NEMASKA FIRST NATION (BAND), a Cree First Nation and a band of Crees forming part of the Cree Nation as well as a band corporation incorporated under the *Cree-Naskapi (of Quebec) Act*, with its band office in Nemaska, Québec, J0Y 3B0

-and -

THE WASKAGANISH FIRST NATION (BAND), a Cree First Nation and a band of Crees forming part of the Cree Nation as well as a band corporation incorporated under the *Cree-Naskapi (of Quebec) Act*, with its band office in Waskaganish, Québec, J0M 1R0

- and-

THE CREE NATION OF MISTISSINI (BAND), a Cree First Nation and a band of Crees forming part of the Cree Nation as well as a band corporation incorporated under the *Cree-Naskapi (of Quebec) Act*, with its band office in Mistassini, Québec, G0W 1C0

-and-

THE OUJÉ-BOUGOUMOU CREE NATION, a Cree First Nation and a traditional band of Crees forming part of the Cree Nation, with its band office in Oujé-Bougoumou, Québec, GOW 3C0

-and-

THE GRAND COUNCIL OF THE CREES (EEYOU ISTCHEE) (GRAND COUNCIL OF THE CREES (OF QUEBEC)), a corporation duly incorporated under the Laws of Canada, having its head office at Chisasibi, Québec, and its principal executive office at Nemaska, Québec, J0Y 3B0

-and-

THE CREE REGIONAL AUTHORITY, a corporation constituted under a special Act of Québec, having its head office at Mistissini, Québec, and its principal executive office at Nemaska, Québec, J0Y 3B0

-and-

CREE TRAPPERS' ASSOCIATION, an association of Cree trappers, constituted in its present form pursuant to the *James Bay and Northern Quebec Agreement* and incorporated under Part II of the *Canada Corporations Act*, with its head office in Mistissini, Québec, G0W 1C0

-and-

EDWARD GILPIN, of Eastmain, Québec, J0M 1W0, suing personally and as President of the Cree Trappers' Association

PLAINTIFFS

-VS-

THE ATTORNEY-GENERAL OF QUÉBEC, representing Her Majesty the Queen in Right of Québec, Hôtel du Gouvernement, Québec, District of Québec, Province of Québec (herein referred to as the Attorney-General of Québec or the AGQ)

-and -

THE ATTORNEY-GENERAL OF CANADA, representing Her Majesty the Queen in Right of Canada, Parliament Buildings, Ottawa, (herein referred to as the Attorney-General of Canada or the AGC)

-and -

THE PROVINCIAL ADMINISTRATOR UNDER SECTION 22 OF THE *JAMES BAY AND NORTHERN QUEBEC AGREEMENT*, having an office at 675 René-Lévesque East, 30th Floor, Québec, District of Québec, Province of Québec, G1R 5V7

-and-

THE FEDERAL ADMINISTRATOR UNDER SECTION 22 OF THE *JAMES BAY AND NORTHERN QUEBEC AGREEMENT*, having an office at 200, boul. du Sacré Coeur, 14th Floor, Hull, District of Hull, Province of Québec, K1A 0H3

-and-

THE HONOURABLE PAUL BÉGIN, in his capacity as the Québec Minister of the Environment, Marie-Guyart Building, 675 René-Lévesque Blvd East, 30th Floor, Québec, District of Québec, Province of Québec, G1R 5V7

-and-

THE HONOURABLE CHRISTINE STEWART, in her capacity as Minister of the Environment of Canada, Terrasses de la Chaudière, 10 Wellington Street, 28th Floor, Hull, District of Hull, Province of Québec, K1A 0H3

-and-

THE HONOURABLE JANE STEWART, in her capacity as Minister of Indian Affairs and Northern Development, 10 Wellington Street, 21sth Floor, Bureau 2100, Hull, District of Hull, Province of Québec, K1A 0H4

-and-

THE HONOURABLE JOHN MANLEY, in his capacity as Minister for the Federal Office of Regional Development Québec, 1883 Bank Street, Ottawa, Ontario, K1V 7Z9

-and-

THE HONOURABLE DAVID M. COLLENETTE, in his capacity as Minister of Transport, 330 Sparks Street, 29th Floor, Place de Ville, Ottawa, Ontario, K1A 0N5

-and-

THE HONOURABLE GUY CHEVRETTE, in his capacity as Minister of Natural Resources, 5700, 4th Avenue West, Bureau A308, Charlesbourg, District of Québec, Province of Québec, G1H 6R1

-and-

LA SOCIÉTÉ DE DÉVELOPPEMENT DE LA BAIE JAMES, a corporation duly incorporated, having its head office at 800 de Maisonneuve Blvd. East, Montréal, District of Montréal, Province of Québec, H2L 4M8

- and -

REXFOR, a joint stock company and a legal person established for a private interest, the shares of which are owned by the Government of Québec, having a place of business at 1195 Lavigerie Street, Sainte-Foy, District of Québec, Province of Québec, G1V 4N3

-and-

DOMTAR INC., a corporation and a legal person established for a private interest, and part of the shares of which are owned by or for the benefit of the Government of Québec, having a place of business at 395 de Maisonneuve Blvd. West, Montréal, District of Montréal, Province of Québec, H3A 1L6

-and-

PRODUITS FORESTIERS DONOHUE INC. (which includes the company formerly known as Produits Forestiers Saucier Inc.), a corporation and a legal person established for a private interest, having a place of business at 500 Sherbrooke Street West, Montréal, District of Montréal, H3A 3C6

-and-

BARRETTE-CHAPAIS LTÉE, a corporation and a legal person established for a private interest, having a place of business at 2907 Dagenais Blvd. West, Laval, District of Laval, Province of Québec, H7P 1T2

-and-

TEMBEC INC.,a corporation and a legal person established for a private interest, having a place of business at 800 René-Lévesque Blvd. West, Montréal, District of Montréal, Province of Québec, H3B 1K9

-and-

LES CHANTIERS DE CHIBOUGAMAU LTÉE, a corporation and a legal person established for a private interest, having a place of business at 521 Chemin Merill, P.O. Box 216, Chibougamau, District of Abitibi, Province of Québec, G8P 2K7

-and-

NORMICK-PERRON INC., a corporation and a legal person established for a private interest, having a place of business at 225 Chemin Normick, La Sarre, District of Abitibi, Province of Québec, J9Z 2K6

-and-

LES INDUSTRIES NORBORD INC., a corporation and a legal person established for a private interest, having a place of business at 210, 9th Avenue East, P.O. Box 280, La Sarre, District of Abitibi, Province of Québec, J9Z 2X5

-and-

ABITIBI-CONSOLIDATED INC. (formerly known as Stone-Consolidated Corporation and as Abitibi-Price and as Consolidated Bathurst), a corporation and a legal person established for a private interest, having a place of business at 1155 Metcalfe Street, Suite 800, Montréal, District of Montréal, Province of Québec, H3B 5H2

-and-

MATÉRIAUX BLANCHET INC., a corporation and a legal person established for a private interest, having a place of business at 2271 Route de l'Aéroport, Amos, District of Abitibi, Province of Québec, J9T 3A8

-and-

SCIERIE AMOS INC., a corporation and a legal person established for a private interest, having a place of business at 301 Harricana Street West, P.O. Box 460, Amos, District of Abitibi, Province of Québec, J9T 3A8

-and-

SCIERIE GALLICHAN INC., a corporation and a legal person established for a private interest, having a place of business at 793 Chicobi Street, Launay, District of Abitibi, Province of Québec, J0Y 1W0

-and-

FILIFOR INC.,a corporation and a legal person established for a private interest, having a place of business at 389 Chemin du Moulin, Village of Landrienne, District of Abitibi, Province of Québec, J0Y 1V0

-and-

IPB INTERNATIONAL INC., a corporation and a legal person established for a private interest, having a place of business at 175 Louis Hébert Street, Mascouche, District of Joliette, Province of Québec, J7K 3C1

-and-

SCIERIE LANDRIENNE INC., a corporation and a legal person established for a private interest, having a place of business at 389 Chemin du Moulin, in the Village of Landrienne, District of Abitibi, Province of Québec, JOY 1V0

-and-

BOIS KMS (GMI) LTÉE, a corporation and a legal person established for a private interest, having a place of business at 139 Chemin Francisco, C.P. 640, L'Annonciation, District of Labelle, Province of Québec, J0T 1T0

-and-

FOURNITURES MINIÈRES SIMARD INC., a corporation and a legal person established for a private interest, having a place of business at 195 De La Biomasse Street, C.P. 759. Chapais, District of Abitibi, Province of Québec, G0W 1H0

-and-

SCIERIE SENCO LTÉE, a corporation and a legal person established for a private interest, having a place of business at 11 Chemin Du Lac Clair, Senneterre, District of Abitibi, Province of Québec, J0Y 2M0

-and-

PRODUITS FORESTIERS ALLIANCE INC. a corporation and a legal person established for a private interest, having a place of business at 1,000 de la Gauchetière Street West, Suite 2820, Montréal, District of Montréal, Province of Québec, H3B 4W5

-and-

OPTIBOIS INC. (formerly known as 2541-3998 QUÉBEC INC. (PRÉCIBOIS)), a corporation and a legal person established for a private interest, having a place of business at 692, Route 397, Barraute, District of Abitibi, Province of Québec, J0Y 1A0

-and-

PANNEAUX CHAMBORD INC., a corporation and a legal person established for a private interest, having a place of business at 120, Route 155, Chambord, District of Roberval, Province of Québec, G0W 1G0

-and-

KRUGER INC., a corporation and a legal person established for a private interest, having a place of business at 3285 Chemin Bedford, Montréal, District of Montréal, Province of Québec, H3S 1G5

-and-

LE GROUPE FOREX INC., a corporation and a legal person established for a private interest, having a place of business at 1 Place Ville-Marie, Montréal, District of Montréal, Province of Québec, H3B 3N6

-and-

FOREX INC., a corporation and a legal person established for a private interest, having a place of business at 689, 3rd Avenue, C.P. 296, Val d'Or, District of Abitibi, Province of Québec, J9P 1S7

-and-

BISSON ET BISSON INC., a corporation and a legal person established for a private interest, having a place of business at 395 de Maisonneuve Blvd. West. Montréal, District of Montréal, Province of Québec, H3A 1L6

-and-

HOWARD - BIENVENUE INC., a corporation and a legal person established for a private interest, having a place of business at 747 Boissy, St-Lambert, District of Longueuil, Province of Québec, J4R 1K1

-and-

COMPAGNIE INTERNATIONALE DE PAPIER DU CANADA, a corporation and a legal person established for a private interest, having a place of business at 40 King Street West, Toronto, Ontario, M5H 3Y4

DEFENDANTS

DECLARATION

1. Introduction and The Parties

1. Plaintiffs sue herein, with respect to Defendants the Attorney-General of Québec, the Attorney-General of Canada and la Société de développement de la Baie James, under reserve of and without prejudice to the legal proceedings pending in this Court under the numbers 500-05-004330-906 and 500-05-017463-934 and the legal proceedings pending in the Federal Court of Canada under the numbers T-962-89, T-1913-90 and T-3007-93 and the positions of Plaintiffs therein.

2. Individual Plaintiffs, including those on whose behalf and for whose benefit Grand Chief Matthew Coon Come and the respective Chiefs and former Chief William Mianscum sue in the present proceedings, are all Aboriginal persons of Cree ancestry, all Indians and Aboriginal Peoples within the meaning of sections 91(24) of the *Constitution Act, 1867* and the *Constitution Act, 1982* (as amended) and all part of the Cree Nation in Québec.

3. Plaintiffs the Cree Nations of Mistissini and Waswanipi and the Nemaska and the Waskaganish First Nations are part of the Cree Nation, Cree communities and traditional bands and part of an organized society. These Plaintiffs, including their respective members and their ancestors, as part of an organized society or Indian Nation, have

continuously since time immemorial, or at least since prior to the assertion of European sovereignty or any colonization, occupied, used and possessed respectively various parts of Cree Traditional Territory (Eenou Astchee) described in paragraph 15 hereof. The Cree Nation, including the James Bay Crees, Plaintiffs the Cree Nations of Mistissini and Waswanipi, the Nemaska and Waskaganish First Nations and Plaintiff Oujé-Bougoumou Cree Nation and their members have historically exclusively occupied, used and possessed since time immemorial or at least since prior to the assertion of European sovereignty, all of Eenou Astchee, except for certain parts thereof illegally appropriated for resource exploitation or unauthorized activities and, since 1975, except for certain parts thereof in regard to which the Crees consented to some shared use.

4. Plaintiffs the Cree Nation of Mistissini, the Cree Nation of Waswanipi and the Nemaska and the Waskaganish First Nations are parties to the *JBNQA* and band corporations under the *Cree-Naskapi (of Quebec) Act.*

5. Plaintiff the Oujé-Bougoumou Cree Nation is a traditional band and a group or collectivity and a particular organized society or specific Indian Nation within the greater Cree Nation and part of the Cree Nation and is a party hereto both in furtherance of the objectives, rights and interests of the Cree Nation as a whole in regard to the matters described herein as well as in regard to its own purposes, rights and interests.

6. Plaintiff the Oujé-Bougoumou Cree Nation, including its members and their ancestors, has continuously since time immemorial or at least since prior to the assertion of European sovereignty over or any colonization in that area, occupied, used and possessed the area of land situated in Québec between approximately parallels 48°30' and 50°45' of latitude north and meridians 73°30' to 75°30' of longitude west, comprising approximately 9,000 square kilometres of land and the resources thereof, in part jointly with the Cree Nation of Mistissini, including its members and their ancestors.

7. Plaintiff the Oujé-Bougoumou Cree Nation is neither a party to the *JBNQA* nor any other treaty nor a band corporation under the *Cree-Naskapi (of Quebec) Act.* Plaintiff the Oujé-Bougoumou Cree Nation and Plaintiffs the members thereof, since they are not parties to the *JBNQA* or any other treaty, do not invoke any treaty rights herein and any reference to the treaty rights of Plaintiffs or to rights or procedures under the *JBNQA* herein excludes Plaintiffs the Oujé-Bougoumou Cree Nation and its members and the area of land described in paragraph 6 including the natural resources thereof in regard to the Oujé-Bougoumou Cree Nation. However, all references herein to aboriginal rights of Plaintiffs include the Oujé-Bougoumou Cree Nation and its members and the area of land described in paragraph 6 including the natural resources thereof.

8. Chief George Wapachee, Chief John Kitchen, Chief - Dr. Billy Diamond, Chief Abel Bosum and former Chief William Mianscum sue personally and on behalf of their respective First Nations or Bands and the members thereof together with Grand Chief Matthew Coon Come. Plaintiff Chief Kenny Loon is Chief of the Cree Nation of Mistissini and sues personally and on behalf of the other members of the Cree Nation of Mistissini. Plaintiff Mario Lord sues personally and is the Ndoho Ouchimau of the hunting territory sometimes described as W-11-B which has been detrimentally affected by at least six of Defendant companies. Edward Gilpin sues personally and as a representative of the Cree Trappers' Association.

9. Grand Chief Matthew Coon Come sues personally and on behalf of the Cree Nation comprehensively and on behalf of the individual members thereof, the James Bay Crees, who are also the members of Plaintiff the Grand Council of the Crees (Eeyou Istchee) (Grand Council of the Crees (of Quebec)) (herein GCCEI). He also sues on behalf of the individual Plaintiffs who are Ndoho Ouchimauch and Ndoho Eenouch and who are listed in Schedule I, in conjunction with the various Chiefs and former Chief William Mianscum, in regard to the members of their respective First Nations or Bands.

10. Plaintiff Chiefs and former Chief William Mianscum and Plaintiff Grand Chief Matthew Coon Come have been specifically mandated to sue herein on behalf of the Ndoho Ouchimauch or Ndoho Eenouch listed in the annexed Schedule I by Powers of Attorney filed herein as Schedule II.

11. Plaintiff Executive Chief and Deputy Grand Chief and Vice-Chairman Violet Pachanos sues personally and as alternate to the Grand Chief on behalf of the Ndoho Ouchimauch or Ndoho Eenouch listed in the annexed Schedule I in virtue of Schedule II and as an alternate to the Grand Chief on behalf of the members of the Cree Nation.

12. The Plaintiffs listed in the annexed Schedule I and Schedule II hereto are all Ndoho Ouchimauch or Ndoho Eenouch with individual and collective rights and interests in their respective hunting territories and all have aboriginal rights and treaty rights on an individual basis therein and particular direct and personal interests in their respective hunting territories, in addition to their aboriginal rights and treaty rights and interests as part of the Cree collectivity in respect to the area and resources described in paragraph 15 hereof.

13. Individual and First Nation or Band Plaintiffs and the James Bay Crees and the Cree Nation since time immemorial have had and have exercised existing aboriginal rights and have continuously had and exercised practices, traditions and customs integral to their

distinctive culture, and which are a central and significant part thereof, in their traditional lands described below in paragraph 15 hereof.

14. Individual and First Nation or Band Plaintiffs and the James Bay Crees and the Cree Nation have also since time immemorial carried on activities which are elements of practices, customs or traditions integral to the distinctive culture of the Cree Nation, the James Bay Crees and the components thereof, including in respect to the use of the forest and forestry resources, over, in and under all of their traditional lands described below in paragraph 15 hereof.

15. The Cree Traditional Territory (Eenou Astchee) or the traditional lands of the Cree Nation and the James Crees, including the Cree First Nation or Band Plaintiffs and individual Plaintiffs, comprise the area of land and all resources, including the forest, situated in the Province of Québec and elsewhere between approximately parallels 48° and 56°30' of latitude north and meridians 82° to 68° of longitude west, less the area of land in Québec situated between approximately parallels 48° and 52° of latitude north and meridians 71° to 68° of longitude west, and less certain other areas south and east of the height of land, comprising some 45,000 square kilometres of land (herein referred to as Eenou Astchee).

16. GCCEI is the new corporate name for the Grand Council of the Crees (of Quebec), and Plaintiff GCCEI is thus a party to the *JBNQA*, which is a treaty, and Plaintiff the GCCEI has acted and still acts on behalf of and as a representative of the James Bay Crees in respect to the implementation of the *JBNQA* and related legislation and other undertakings and also acts generally as a representative of the Cree Nation and the James Bay Crees, including in respect to various Cree rights asserted herein and in respect to Eenou Astchee.

17. Plaintiff the Cree Regional Authority (herein the CRA) was constituted pursuant to the *JBNQA* and incorporated by the *Act respecting the Cree Regional Authority* (S.Q. 1978, Chapter 89). It is empowered to assist and has assisted the James Bay Crees in the exercise of their rights, and in the defence of their interests.

18. Pursuant to the *JBNQA*, Plaintiff the CRA is empowered to give and has given valid consents on behalf of the James Bay Crees, has acted and acts as a representative of the James Bay Crees for certain purposes relating to certain Cree rights and relating to the *JBNQA*, notably with respect to amendments under the *JBNQA*, has appointed and appoints representatives to various committees under the *JBNQA*, and is the designated Cree party under the *JBNQA*.

19. Plaintiff the Cree Trappers' Association has existed as an organized entity since prior to the JBNQA, was formally constituted pursuant to the *James Bay and Northern Quebec Agreement* as amended (herein the *JBNQA*) and includes as members all the Plaintiffs individually listed in the annexed Schedule I and also represents certain of their interests. The objects of the Cree Trappers' Association include a) the conservation of fur-bearing animals as a renewable natural resource, and b) assisting Ndoho Ouchimauch and Ndoho Eenouch (also sometimes referred to as tallymen, hunters, fishermen and trappers) to protect their rights and interests and to promote their way of life, values and activities and traditions.

20. Defendant the Attorney-General of Québec represents the provincial Crown as well as the Ministers and Departments thereof and is liable for their actions and omissions and has certain trust or fiduciary obligations to Plaintiffs with respect to: a) the constitutionalized aboriginal and treaty rights of Plaintiffs; b) the *JBNQA*; and c) provincial legislation relating to the *JBNQA*, all of which that Defendant has breached.

21. Defendant the Attorney-General of Canada represents the Crown in Right of Canada as well as all the Departments and Ministers thereof and is liable for their actions and omissions and has trust or fiduciary obligations to Plaintiffs with respect to a) the constitutionalized aboriginal and treaty rights of Plaintiffs, including their rights under the *JBNQA*, b) the *JBNQA* and c) the legislation relating to the *JBNQA* and furthermore has a special responsibility to ensure the full implementation and the effective exercise thereof, all of which that Defendant has breached.

22. Defendant the Provincial Administrator under Section 22 of the *JBNQA* exercises certain functions and has various responsibilities under Section 22 of the *JBNQA*, including those relating to forestry activities which are the object of these proceedings.

23. Defendant Minister Paul Bégin is the Provincial Minister of the Environment who is charged with various functions and responsibilities, including those related to the forestry activities which are the object of these proceedings, pursuant to the *Environment Quality Act* but subject to the *JBNQA*.

24. Defendant the Federal Administrator under Section 22 of the *JBNQA* exercises certain functions and has various responsibilities under Section 22 of the *JBNQA*, including those related to the forestry activities which are the object of these proceedings.

25. Defendant the federal Minister of the Environment under the *Canadian Environmental Assessment Act* (*C.E.A. Act*) is also charged with various functions and

responsibilities pursuant to Section 22 of the *JBNQA* and subject to the *JBNQA*, pursuant to federal laws of general application including functions and responsibilities respecting environmental and social impact assessment and review and approvals in respect to the forestry activities which are the object of these proceedings.

26. Defendant Minister of Indian Affairs and Northern Development is particularly charged with the trust or fiduciary obligations of the AGC to Plaintiffs described in paragraph 21 hereof.

27. Defendant Minister for the Federal Office of Regional Development, Québec, and Defendant Minister of Transport have particular functions and responsibilities to ensure the observance of proper environmental and social impact assessment and review in respect to forestry activities which affect federal funding and navigable waters respectively.

28. Defendant the Québec Minister of Natural Resources is particularly charged with the trust or fiduciary obligations of the AGQ to Plaintiffs as well as the obligations of the AGQ to respect and implement Cree aboriginal rights and treaty rights in regard to natural resources.

29. Defendant the SDBJ, since the *James Bay Region Development Act* of 1971, has been involved in and promoted forestry operations and activities in a significant part of Eenou Astchee, which have breached and prejudiced the aboriginal and treaty rights of Plaintiffs.

30. Defendant Rexfor Inc, a company the shares of which are owned by Defendant the AGQ, has also substantially participated and otherwise been involved in forestry operations and activities in a significant part of Eenou Astchee which have breached and prejudiced the aboriginal and treaty rights of Plaintiffs.

31. The other Defendant corporations are all forestry companies which are engaged or have been engaged in forestry operations and activities in Eenou Astchee, involving among other things the cutting of the forest on several of the hunting territories (hereinafter sometimes referred to as traplines) of Plaintiffs, since 1987 purportedly pursuant to "Contrats d'approvisionnement et d'aménagement forestier" (CAAFs) allegedly issued by Defendant the AGQ and prior to 1987, pursuant to timber limits or forestry concessions purportedly granted or authorized by Defendant the AGQ. These forestry operations and activities have been carried out to the detriment of Plaintiffs and their ancestors and in breach of their aboriginal and treaty rights.

2. Cree Traditional Use of the Land

32. The James Bay Crees, including Plaintiffs, and their ancestors have continuously hunted, trapped and fished and harvested in Eenou Astchee and used and occupied Eenou Astchee and the natural resources thereof and made use of all of its components, including the forest, the trees, the timber, wood, by-products of these and all the associated undergrowth and vegetation, have obtained their livelihood and subsistence from Eenou Astchee and the natural resources thereof, have continuously possessed, controlled and managed and possess, control and manage Eenou Astchee and have identified and named all significant geographical places and features in Eenou Astchee.

33. The James Bay Crees, including Plaintiffs, have, from time immemorial or at least since well before European contact, enjoyed a special relationship with the land and resources of Eenou Astchee. They have used and respected this land and its resources, have lived in an equilibrium with the land and its resources and have been able to satisfy their current needs, earn a livelihood from the land, ensure the preservation of the land and resources, ensure the sustenance of future generations, sustain their spirituality and practice their customs, traditions and values and carry on their unique traditional practices and activities. However, this relationship and use, these practices, customs and traditions and this ability to earn a livelihood from the land have been severely compromised in respect to certain areas cut by Defendant corporations with the concurrence of the AGQ and the AGC and in respect to other areas which have been the object of natural resource exploitation with the concurrence of the AGQ and the AGC.

34. Since well before European contact, Plaintiffs and their ancestors have:

a) obtained their livelihood, subsisted and developed as a society and a people in and from their traditional lands (Eenou Astchee), including the natural resources thereof, which comprise the forestry resources;

b) used and enjoyed the natural resources of Eenou Astchee and made use of its fruits and produce, including wood for shelter, for fuel, for canoes and for hunting and trapping equipment;

c) hunted, trapped and fished (harvested) throughout Eenou Astchee which activities depended upon maintenance of the forest and its habitat potential;

d) carried on, evolved and developed, according to their own values and priorities, their particular way of life in Eenou Astchee;

e) economically benefited from Eenou Astchee;

f) enjoyed an adequate land and resource base;

g) used the rivers and other waterbodies for their traditional activities, including transportation and sustenance;

h) generally used and shared and participated meaningfully and effectively in the use and management of Eenou Astchee and the natural resources thereof;

i) carried on and developed their spiritual and cultural practices in Eenou Astchee;

j) continuously enjoyed and exercised their unique concept of the land and their special relationship with the land;

k) managed and functioned in the Cree hunting territory system;

l) functioned, developed and evolved as a distinct nation and society with their own culture, values, customs, practices, traditions and institutions;

m) survived as a people on, and to a significant degree because of, the land;

n) acted as protectors and stewards of the land and the environment and the animals; and

o) acted as conservation managers of the land and the animals.

35. The Crees allocated among themselves parcels of land as hunting territories under the responsibility of acknowledged leaders or Ndoho Ouchimauch. This Cree hunting territory system is a unique aboriginal land tenure system historically implemented and maintained by the Crees over all of Eenou Astchee. The Cree hunting territory system is also integral to the culture, way of life, livelihood, practices, customs and traditions of the James Bay Crees.

36. Cree Ndoho Ouchimauch, such as certain of the individual Plaintiffs identified in the annexed Schedule I, have historically been and are presently acknowledged by the

members of the Cree communities as being responsible for the protection and management of the natural resources, including forestry resources, as well as for the preservation and maintenance of the wildlife and habitats in their hunting territories and for the supervision of harvesting activities, and with their families depend on their hunting territories for their livelihood and economic subsistence, for their culture and their spiritual life, and for the continuation of the Cree way of life.

37. The Cree hunting territory system is part of the constitutionalized aboriginal and treaty rights of individual Plaintiffs and is also recognized by the *JBNQA* and related legislation, including *An Act respecting hunting and fishing rights in the James Bay and New Québec territories.* In these instruments, the Cree hunting territory system is referred to as the Cree trapline system.

3. Forestry System of "Québec" and Forestry Operations prior to *JBNQA*

38. Prior to November 11, 1975, the date of execution of the *JBNQA*, Plaintiffs and their ancestors also had and exercised aboriginal rights respecting the forest and forestry resources in Eenou Astchee, including the full beneficial use thereof.

39. Furthermore, prior to November 11, 1975, Eenou Astchee constituted Lands reserved for the Indians within the meaning of section 91(24) of the *Constitution Act, 1867* and an interest other than that of the Province within the meaning of section 109 of the *Constitution Act, 1867*.

40. Prior to November 11, 1975, the aboriginal rights of the James Bay Crees, including Plaintiffs, were, as between Canada and Québec, matters under exclusive federal jurisdiction.

41. The aboriginal rights of the James Bay Crees, including Plaintiffs, took precedence over and conditioned Québec legislation relating to the forest and forestry resources and lands and any purported rights granted thereunder.

42. The allegations in the immediately preceding three paragraphs were also applicable prior to and upon the execution of the Agreement-in-Principle of November 15, 1974.

43. Prior to the Agreement-in-Principle of November 15, 1974 and prior to November 11, 1975, Defendant the AGQ purported to adopt, implement and apply to Eenou Astchee legislation relating to the forest, forestry resources and lands in Eenou Astchee, notably

through the *Lands and Forests Act* (R.S.Q. 1964, ch. 92 (as amended)) and the *James Bay Region Development Act* (1971 S.Q., ch. 34).

44. Québec legislation relating to the forest, the forestry resources and lands in Eenou Astchee was constitutionally null and void or inapplicable to the extent it was incompatible with or interfered with the aboriginal rights of the James Bay Crees and their ancestors, including Plaintiffs, or to the extent it purported to apply to Eenou Astchee.

45. At the time of signing of the Agreement-in-Principle of November 15, 1974 and at the time of the execution of the *JBNQA*, the Québec forestry system was essentially based on forestry concessions ("concessions forestières") and timber limit licences which contemplated annual ministerial authorizations to cut timber in specific areas.

46. In 1974, the land allegedly allocated to forestry companies for forestry operations in Eenou Astchee was approximately 24,000 square kilometres, of which approximately 15,000 square kilometres were allegedly granted to Defendant forestry companies Domtar Inc. and Kruger Inc. and to Consolidated Bathurst, now identified as Abitibi-Consolidated Inc.

47. Significant clear-cutting of the forest without the consent of the James Bay Crees, including Plaintiffs, had occurred in the southern part of Eenou Astchee, basically below the 50th parallel of latitude. Nonetheless, the actual cutting was largely on a smaller scale basis and generally in sites along major roadways. Such cutting particularly affected the hunting territories of the members of the Waswanipi, Oujé-Bougoumou and Mistissini First Nations or Bands.

48. Prior to 1975, certain of Defendant forestry companies, notably Defendants Domtar Inc., Produits Forestiers Dohonue Inc., Kruger Inc., Abitibi-Consolidated Inc., Forex Inc., Bisson et Bisson Inc., Howard-Bienvenue Inc. and Compagnie Internationale de Papier du Canada carried out forestry operations and activities and exploited the forestry resources of Eenou Astchee illegally and in breach of the rights of Plaintiffs and caused extensive damages to Plaintiffs.

49. At the time of the Agreement-in-Principle of November 15, 1974, forestry operations took place mainly to the south of Eenou Astchee and, except for small parts of forestry concessions, the concessions did not extend north of the 50th parallel of latitude. However, there were forestry domains north of the 50th parallel of latitude, especially in the hunting territories of members of the Cree Nation of Mistissini.

50. Consequently, despite the cutting in the southern part of Eenou Astchee, at the time of the Agreement-in-Principle of November 15, 1974, a large portion of the forest of Eenou Astchee had still not been subjected to significant forestry operations. Moreover, there were virtually no major forestry roads slightly north of the 50th parallel of latitude.

51. In addition, at the time of the Agreement-in-Principle of November 15, 1974 and at the time of the execution of the *JBNQA*, no major forestry operations or activities were contemplated for the areas north of approximately the 50th parallel of latitude. The area north of the 50th parallel of latitude was considered by the AGQ, the forestry industry and forestry companies, including some of Defendant corporations, and by the James Bay Crees, as not being an area where significant forestry operations could take place on a commercially viable basis. Consequently, no major forestry operations or activities were contemplated for the area north of approximately the 50th parallel of latitude and it was with this understanding that the James Bay Crees entered into both the Agreement-in-Principle and the *JBNQA*.

52. Moreover, at the time of the Agreement-in-Principle of November 15, 1974 and at the time of the execution of the *JBNQA*, the parties thereto understood that forestry activities and operations in Eenou Astchee would be controlled and planned and would respect Cree priority use of the land. Forestry activities were thus to be made compatible and reconcilable with Cree use of the land, Cree activities and the Cree traditional way of life.

4. The Agreement-in-Principle

53. The *JBNQA* was preceded by an Agreement-in-Principle (herein the AIP) executed on November 15, 1974 by Plaintiff the Grand Council of the Crees (of Quebec) (GCCEI), the Northern Quebec Inuit Association, Defendant the AGQ, the James Bay Energy Corporation, the James Bay Development Corporation, Hydro-Québec and Defendant the AGC, setting forth several basic principles incorporated and reflected in the *JBNQA* of November 11, 1975.

54. The AIP to the extent that it is not inconsistent with the *JBNQA*, binds the parties thereto and assists in the interpretation of the spirit and intent of the *JBNQA*.

55. Under Section 10B of the AIP regarding Category II lands, the parties recognized that forestry concessions, timber limits or equivalent wood rights might exist in Category II lands, subject to the terms and conditions to be agreed upon through further

negotiations. The areas in which forestry activities occurred were thus not to be precluded from selection as Category II lands.

56. The AIP also contemplated the continuation of hunting, fishing and trapping as a principal Cree occupation throughout Eenou Astchee with adequate guarantees, participation in economic development of the territory, protection of the environment, and the priority of Cree rights over incompatible federal and provincial legislation.

57. The AIP contemplated the reconciliation of forestry operations with the meaningful exercise of Cree rights and interests, the continuation of the hunting territory and trapline system and the protection of the forestry resources, notably in Sections 2, 4, 11 and 23 of the AIP.

58. Forestry operations in Eenou Astchee under the AIP were conditional upon such operations being or being made compatible with Cree rights and interests and respect for the different regimes contemplated by the AIP to be included in the *JBNQA*.

5. The *James Bay and Northern Quebec Agreement* - General Description

59. On or about November 11, 1975, the *JBNQA* was executed between the Grand Council of the Crees (of Quebec), eight Cree Bands including Plaintiff Bands, the members of eight Cree Bands, the Northern Quebec Inuit Association and the Inuit of Québec and the Inuit of Port Burwell and the Government of Québec, la Société d'énergie de la Baie James, la Société de développement de la Baie James, Hydro-Québec and the Government of Canada.

60. The *JBNQA* was approved, given effect to and declared valid by the *James Bay and Northern Quebec Native Claims Settlement Act* (1976-77, 25-26 Eliz. II, chapter 32) and *An Act approving the Agreement concerning James Bay and Northern Quebec* (1976 Statutes of Québec, chapter 46) and is a Treaty.

61. The *JBNQA* and the rights of Plaintiffs thereunder are constitutional conditions in fulfilment of the *1912 Québec Boundaries Extension Acts* and the June 23, 1870 *Imperial Order-in-Council* in virtue of which Rupert's Land and the Northwestern Territory were admitted as part of the Dominion of Canada.

62. The *JBNQA* is a treaty, the spirit and intent and fundamental purpose of which was to ensure the continuation and guarantee of the way of life, culture, values and traditions of the James Bay Crees while providing for a measured use of the natural resources

thereon to be done in strict conformity with a fully implemented *JBNQA* and in accordance with the guiding principles thereof.

63. The premises on which Cree consent to the *JBNQA* was given, and without which the James Bay Crees would not have executed it, were that the James Bay Crees could indefinitely continue, if they so wished, their traditional way of life, that the James Bay Crees retained their aboriginal rights, that they were vested with treaty rights in respect to the land and forestry and other natural resources, and that the natural resources and habitat essential for these purposes would continue to be available to the James Bay Crees.

64. The aboriginal rights of the James Bay Crees, including Plaintiffs, in respect to the use of the land and all natural resources were recognized and confirmed by and partially incorporated in the *JBNQA*.

65. At the time of the *JBNQA*, the parties thereto were aware that much of Eenou Astchee had not been subjected to forestry operations.

66. The *JBNQA*, in accordance with the AIP, contemplated the reconciliation of forestry operations with the meaningful exercise of and respect for Cree rights and interests respecting the land and the natural resources, the continuation of the hunting territory system into the Cree trapline system within the meaning of the *JBNQA*, the protection of the forestry resources, the participation of the James Bay Crees in economic development of the forestry resources and the priority of Cree rights over incompatible federal and provincial legislation.

67. Furthermore, the *JBNQA* recognized the priority of native harvesting, guaranteed levels of harvesting for the James Bay Crees, exclusive rights to fur-bearing animals and other species of wildlife and Cree priority use of the forest.

68. In addition, the specific rights and guarantees of Plaintiffs in Section 24 of the *JBNQA* are explicitly guaranteed, protected and given effect to, with respect to environmental and social protection, by and in accordance with Sections 22 and 23 of the *JBNQA*. Therefore, all activities, including forestry activities, susceptible of affecting the rights of Plaintiffs, including their treaty rights to hunt, fish and trap, are subject to social and environmental assessment and review under Sections 22 and 23 of the *JBNQA*.

69. Under the *JBNQA*, Eenou Astchee has been categorized for administrative and other purposes under different headings, into Category I, Category II and Category III

lands, as described in the *JBNQA*, and more particularly in Sections 4 and 5 thereof. However, Eenou Astchee comprises an integral hunting territory for the James Bay Crees without any distinction and they exercise all their rights throughout Eenou Astchee. Furthermore, the rights of Plaintiffs to use and occupy the land and carry on their harvesting and other activities extend throughout Eenou Astchee regardless of the land categories.

70. The works, operations and activities of Defendant forestry companies contemplated herein are those which have taken place and continue to take place on Category II and Category III lands within the meaning of the *JBNQA*.

6. Rights under *JBNQA*, related legislation and the Constitution, and Trust Obligations

71. Under Section 3(2) of the *James Bay and Northern Quebec Native Claims Settlement Act* and section 2.2 of the *Act approving the Agreement concerning James Bay and Northern Quebec*, the Cree beneficiaries under the Agreement, have as treaty and statutory rights the rights, privileges and benefits set out in the *JBNQA*, which also confirms the aboriginal rights of Plaintiffs in respect to the land and resources of Eenou Astchee.

72. Pursuant to Sections 35, 52 and 25 of the *Constitution Act, 1982* (as amended), the rights of Plaintiffs under the *JBNQA* are constitutional rights which are affirmed, recognized, guaranteed, entrenched and protected under the Constitution of Canada.

73. Subject to paragraph 7 herein, Individual Plaintiffs are beneficiaries under the *JBNQA* and entitled to invoke the rights of the James Bay Crees thereunder as treaty rights. All individual Plaintiffs are also entitled to invoke aboriginal rights respecting the forestry resources not only as aboriginal rights *per se* but as aboriginal rights confirmed by treaty.

74. At all material times, the Cree Nation and its members, Plaintiffs chiefs and the Cree First Nations and individual Plaintiffs have had and have exercised constitutionalized aboriginal rights and treaty rights in respect to Eenou Astchee and the forestry and other natural resources thereof which include the priority use and benefit of such land and resources and take precedence over any Québec or federal legislation and any rights of Defendants in regard to such land and resources.

75. At all material times, Plaintiff the Oujé-Bougoumou Cree Nation and its members have had and have exercised constitutionalized aboriginal rights in respect to the area described in paragraph 6 and the forestry and other natural resources thereof, in part

jointly with the Cree Nation of Mistissini, including its members and its ancestors, and such aboriginal rights include the priority use and benefit of such land and natural resources and take precedence over any Québec or federal legislation and any rights of Defendants in regard to such land and resources.

76. In addition to their preexisting *sui generis* trust or fiduciary obligations towards Plaintiffs, *inter alia*, in virtue of the *1912 Quebec Boundaries Extension Acts*, the *JBNQA*, the legislation adopted thereunder and the federal common law, Defendants the AGC and the AGQ have and had at all material times trust or fiduciary obligations to Plaintiffs to ensure the preservation and protection of the rights of Plaintiffs relating to hunting, fishing and trapping and the forestry resources, including the aboriginal rights of Plaintiffs as well as their treaty rights under the *JBNQA*.

7. The *JBNQA*, Forestry Activities and the Reconciliation of Competing Interests

77. At the time of the signing of the *JBNQA*, the intention of the parties and the solemn promise of Defendants AGQ and AGC were that Plaintiffs would be entitled to continue their activities, practices and traditions as set out in paragraphs 32 to 35 herein, and that:

a) the Crees would have priority respecting the use of the land and natural resources required to continue their livelihood and way of life and that this would take precedence over any incompatible use of Eenou Astchee;

b) the Cree hunting territory and trapline system would be maintained and enhanced through a systematic reconciliation of Cree traditional pursuits and any other exploitation of Eenou Astchee;

c) any forestry operations carried out would be made compatible with Cree harvesting, and ensure the continued survival of the rights of future generations of Crees to hunt, fish and trap on Eenou Astchee if they so chose;

d) land use plans would be made compatible with the interests of Cree communities; and

e) the Crees would, as a minimum, be consulted and participate in a significant manner in respect to legislation, regulations, policies and operations relating to forestry in Eenou Astchee, including in relation to Forestry Management Plans.

8. Québec Forestry System after the *JBNQA*

(A) *Forest Act*

78. Despite the provisions and intent of the *JBNQA* and in breach of the rights of Plaintiffs, timber cutting sharply increased in Eenou Astchee after the *JBNQA* and the forests of Eenou Astchee abruptly and purportedly became "commercial" forests.

79. On or about April 1st, 1987, a new *Forest Act* (Bill 150, L.Q. 1986, ch. 108) purportedly came into force. That statute, now F-4.1, R.S.Q., *inter alia*, replaced the annual allocation of commercial timber harvesting rights with a single mode of allocation. The Timber Supply and Forest Management Agreements, also known as CAAFs (*Contrats d'approvisionnement et d'aménagement forestier*), as well as the *Forest Act* provided for no special measures relating to Plaintiffs, the *JBNQA* or Eenou Astchee and unilaterally breached the *JBNQA* and the aboriginal and treaty rights of Plaintiffs.

80. Under the *Forest Act*, the Minister of Natural Resources, may enter into a CAAF with a forestry company on the basis of a 25 year forest management plan to be prepared by a prospective CAAF holder and approved by a forest engineer, specifying the forest management activities the CAAF holder intends to carry out, the whole subject to the Minister's approval.

81. Similarly, every CAAF holder must prepare 5-year and annual forest management plans, to be approved by a forest engineer, the whole subject to the Minister's approval.

82. The Minister then makes the 25-year and the 5-year plans, but not the annual plans, available for public examination for 45 days prior to their approval. Such examination is however subject to an application to be made in writing, giving reasons and stating the interest of the applicant in the forest to which the plan applies, and the CAAF holder is only bound to "consult" only those having applied in the first 20 days of the 45 days .

83. Subject to his compliance with the Act and with the terms of his CAAF, every CAAF holder is automatically entitled to obtain an annual forest management permit.

84. The *Forest Act* has breached and continues to breach the aboriginal and treaty rights of Plaintiffs.

85. In further breach of their aboriginal and treaty rights, Plaintiffs are not consulted nor do they participate in the decisions of Defendants respecting the execution and implementation of the CAAFs.

86. The AGQ through the *Forest Act* breached the rights of Plaintiffs under the *JBNQA* by unilaterally changing the nature, scope and intention of management plans, by in effect conferring upon Defendant forestry companies the responsibility for the preparation of the management plans and by removing the protection of Cree rights contemplated for such plans.

(B) *An Act Respecting Lands in the Public Domain*

87. In 1987, the *Act respecting Lands in the Public Domain* was adopted (chap. 23, L.Q. 1987), which breached and continues to breach the aboriginal and treaty rights of Plaintiffs.

88. Among other things, Defendant the AGQ has thwarted the consultation process contemplated therein in respect to Cree Plaintiffs and has effectively ensured that the activities, rights and interests of Cree Plaintiffs were not taken into account in relation to CAAFs or the land use plans. Furthermore, in further breach of Plaintiffs' rights, the proposed land use plan under the *Act respecting Lands in the Public Domain* was transmitted to Plaintiff the Cree Regional Authority after the CAAFs were issued and renewed, defeating the objective of the legislation in regard to Cree Plaintiffs and further breaching their rights.

89. The AGQ violated and continues to violate the *JBNQA*, as well as the aboriginal and treaty rights of Plaintiffs, by making all forestry roads public, without Cree consent.

(C) *The Environment Quality Act*

90. On or about April 1, 1987, the AGQ purportedly amended Annex B to the *Environment Quality Act*, R.S.Q., c. Q-2, to exclude forestry development when included in plans provided for in the *Forest Act*. Such amendment breaches the *JBNQA*, as well as the aboriginal and treaty rights of Plaintiffs.

9. <u>Forestry Operations after 1975</u>

91. From approximately 24,000 sq. km in 1974, the amount of land in Eenou Astchee "allocated" to Defendant forestry companies exceeded approximately 54,000 sq. km as

of December 1994 as appears from the map produced as Exhibit P-1. As of 1996, some 9,400 sq. km of this land so "allocated" had been clear-cut despite the objections and protests of Plaintiffs.

92. Each of the Defendant forestry companies (except for SDBJ and Rexfor Inc.) is presently the holder or beneficiary of one or more CAAFs or had obtained cutting authorizations and has carried out forestry operations, including works and activities in one or more common areas located in whole or in part in Eenou Astchee. Exhibit P-2 indicates all active CAAFs and common areas where the activities of Defendant forestry companies have been or are being carried out, with corresponding Cree hunting territories, which also appears from the the "Répertoire des bénéficiaires de CAAF" produced by the MRN on December 31, 1994. This document has been updated on March 31, 1998 and both "Répertoires" are filed herein en liasse as Exhibit P-3. Exhibits P-2 and P-3 are filed subject to future amendments by Plaintiffs in order to reflect an updated description of Defendant forestry companies' activities in Eenou Astchee.

93. Each CAAF purports to grant its beneficiary 25-year purportedly exclusive rights to carry on forest operations, likely to be extended well beyond 25 years. Each CAAF constitutes basically and virtually a purported permanent alienation to Defendant forestry companies of the forests and forest resources of Eenou Astchee in breach of the aboriginal and treaty rights of Plaintiffs.

94. In addition, all Defendant forestry companies have constructed forestry roads to cut and haul timber. These forestry roads represent an intensive network of forestry roads and an interference with the rights of Plaintiffs and their use of the land and resources. Generally speaking, there are 100 kilometres of road for every 100 square kilometres of harvested forest.

95. Moreover, various Defendant forestry companies have constructed a number of forestry camps and/or base camps for their operations along these roads, causing additional damages to Plaintiffs.

96. Exhibit P-4 shows the forest disturbances within Eenou Astchee as of 1996 resulting from the activities of Defendant forestry companies, as well as from forest fires.

97. Most of Defendant companies and since 1987 all such Defendant companies which are holders of a CAAF, have carried on works, activities and forestry operations in Eenou Astchee since 1975 and have exploited the forestry resources thereof in breach of the aboriginal and treaty rights of Plaintiffs. Such Defendant companies have caused

extensive damages to Plaintiffs and such Defendant companies have benefited from the proceeds of the forest of Eenou Astchee in amounts which total in the billions of dollars. In addition to the violation caused by such exploitation to the rights, culture, practices, traditions, livelihood and way of life of Plaintiffs and the violation of international law and the rights of Plaintiffs thereunder, Plaintiffs have received little or no monetary benefit from such resource extraction.

10. Constitutional Inapplicability of Québec Laws on Forestry to Eenou Astchee

98. The *Forest Act*, the *Act respecting Lands in the Public Domain* and all regulations thereunder are constitutionally inapplicable to the Crees and to Eenou Astchee and null and void in regard thereto, notably in that they breach and are inconsistent with the aboriginal rights of Plaintiffs and their treaty rights under the *JBNQA* and related legislation, and the trust or fiduciary obligations of Defendants the AGC and the AGQ, and cannot in any event be justified.

99. The *Forest Act*, the *Act respecting Lands in the Public Domain* and all regulations thereunder and all purported authorizations pursuant thereto, including the CAAFs, and all activities of Defendant forestry companies thereunder *inter alia* contravene the provisions of section 35 of the *Constitution Act, 1982*, the provisions of the *JBNQA* and notably Sections 2, 4, 5, 8, 11B, 22, 24, 28 and 30 thereof, the *James Bay and Northern Quebec Native Claims Settlement Act*, the *Act approving the Agreement concerning James and Northern Quebec* and the trust or fiduciary obligations of the AGC and the AGQ.

100. In addition, the specific rights to harvest of the James Bay Crees and their right to participate in and to be consulted through the environmental and social impact assessment regime for all new "developments" as prescribed by the *JBNQA* are also breached by *An Act respecting the Lands in the Public Domain*, as well as by the purported exemption of forestry development when included in plans provided for in the *Forest Act* from the assessment and review procedure provided for in the *Environment Quality Act*.

101. The issuance of CAAFs under the *Forest Act* is mechanical and based strictly on commercial and political considerations and the CAAFs constitute the instruments through which the unconstitutional activities of Defendant forestry companies are carried out.

102. Defendant the AGQ and the Defendant forestry companies did not obtain and do not have the right to the natural resources in Eenou Astchee, nor to the exploitation thereof without the consent of the Plaintiffs, which Plaintiffs have not given.

103. The *Forest Act*, the regulations thereunder, the related 25 and 5 year plans and the CAAFs listed in Exhibit P-2 all substantially breach and have breached the *JBNQA* and Plaintiffs' aboriginal and treaty rights and are unconstitutional, inoperative or inapplicable to Cree Category II lands and to Category III lands by virtue of section 91(24) of the *Constitution Act, 1867* and the rights of Plaintiffs.

104. In addition, the *James Bay Regional Development Act* is inoperative to the extent that it conflicts or interferes with the aboriginal and treaty rights of Plaintiffs.

11. General Effect of Forestry Activities on Rights of Plaintiffs

105. The rights of Cree Plaintiffs described herein and particularly the right to hunt, fish and trap (harvest) are highly dependant on the protection of wildlife, wildlife habitat, and forests.

106. Plaintiffs' rights and the *JBNQA* require that any forestry operations be made compatible with the effective exercise of Cree rights and notably the right to harvest, which Defendants have failed to do.

107. Québec forestry legislation and the activities of Defendant forestry companies constitute and amount to an illegal expropriation or appropriation of Plaintiffs' rights.

108. Defendants have also breached the *JBNQA* in that the forestry operations in Eenou Astchee, subsequent to November 11, 1975, have not been made subject to any environmental and social impact assessment and review, and the impacts on the James Bay Crees and on the wildlife resources of Eenou Astchee have not been reasonably minimized.

109. The extent, planning, type, manner and speed of timber cutting purportedly authorized by Defendant AGQ, and as a consequence the activities of the Defendant forestry companies as described above, compromise Eenou Astchee and jeopardize the right of the Crees to their way of life, and prejudice significantly Plaintiffs Ndoho Ouchimauch and Ndoho Eenouch, whose hunting territories are systematically being destroyed.

12. Effects of Defendant Forestry Companies' Activities on Plaintiffs and Plaintiffs' Hunting Territories

110. All of Defendant forestry companies' activities and actions in Eenou Astchee are inconsistent with and breach the aboriginal and treaty rights of the Plaintiffs, the provisions

of the *JBNQA*, and sections 25 and 35 of the *Constitution Act, 1982*, and constitute a breach of the trust or fiduciary obligation of the AGQ and AGQ.

111. The forestry operations and activities of Defendant forestry companies in Eenou Astchee have detrimentally affected the wildlife habitats and activities of Plaintiffs and breached the hunting, fishing and trapping (harvesting) rights and the other rights of Plaintiffs, notably in that past, present and contemplated commercial cutting operations by Defendant companies in Eenou Astchee and on the hunting territories of Plaintiffs:

a) involve in particular:

i) logging practices which inadequately reflect the growth rate of northern forests;

ii) logging practices which fail to reflect adequately rates of stocking following clear-cutting;

iii) the improper construction, use and abandonment of roads and camps;

iv) inappropriate operation of heavy equipment which results in major soil disturbance and a deterioration of regeneration conditions; and

v) the influx and presence of a substantial work force with its associated detrimental social consequences and impact on public safety, such as dangers associated with increased road traffic;

b) result in severe negative social, economic and environmental impacts on the harvesting activities of Plaintiffs, including:

i) interruption and disruption of harvesting by Plaintiffs due to actual or virtual eviction from large portions of their hunting territories and traplines during cutting and during variable periods of time required for re-growth after clear-cutting or extensive cutting;

ii) cutting of much of the productive habitat in certain hunting territories and traplines, resulting in severe social and economic effects for the individual Crees dependent thereon;

iii) changes in harvested species and biological diversity after clear-cutting or extensive cutting;

iv) the development of forestry roads increases accessibility to Eeyou Atschee, which in turn makes wildlife an easier target for sport hunting and fishing;

v) disturbance of Plaintiffs and wildlife by reason of noise in the operation of heavy machinery and otherwise resulting in the absence or reduced presence of large and small game animals, furbearers and waterfowl;

vi) excessive disruption of moose winter habitat and shelter ;

vii) erosion and consequent deterioration of water quality and diminishing the growth and health of wildlife habitat;

viii) deposit of contaminants into waterways;

ix) forestry practices which degrade soil productivity;

x) interference with natural flow in streams and rivers, mainly through inadequate culverts, disturbing fish migration and reducing and changing fish populations;

xi) interference with access to navigable waters at certain camps resulting from the use of undersized culverts and from fallen trees;

xii) disturbance of and inadequate protection for fur-bearing aquatic animals, including beaver and muskrat, and their habitat;

xiii) disturbance of terrestrial fur-bearing animals, including marten, and destruction of their habitat;

xiv) disturbance of waterfowl and destruction of their habitat;

xv) reduced availability of firewood and increased wind chill exposure at and around camps on hunting territories and traplines, rendering them unfit or less fit for the pursuit of harvesting activities;

xvi) theft and vandalism at camps and caches to equipment and material necessary for harvesting, including snowmobiles, canoes, snowshoes, firearms, axes, kitchen and cooking ware and paddles;

xvii) unrestricted public access to a vast network of forestry roads with its associated negative side effects and clash between different cultures;

xviii) as a result of all the above, disruption of the social and economic base of Plaintiffs' communal harvesting practises, including the system of reciprocal invitations on to hunting territories and traplines, the redistribution networks for harvested food within the communities, and the overall supply of harvested food, leaving Plaintiffs with no alternative activity and causing a negative change to their diet;

xix) inadequacy of buffer strips.

xx) inconsistent and inappropriate application of the principle of sustainable yield of timber supply as formulated in the *Forest Act*;

xxi) all Ndoho Ouchimauch Plaintiffs are consequently no longer able to suitably manage their hunting territories; and

xxii) forestry activities force individually listed Plaintiffs to travel further away from their hunting territories in order to carry on their traditional pursuits, resulting in more time being dedicated to travel, higher fuel costs and shorter life and more frequent breaks in equipment.

c) have deprived Plaintiffs of the use of and the benefit from the forestry resources of Eenou Astchee and constituted an illegal expropriation or appropriation thereof without compensation.

13. Social and Environmental Issues

A. Section 22 of the *JBNQA*

112. All forestry projects in Eenou Astchee including all the forestry operations of Defendant forestry companies are subject to the environmental and social impact assessment and review procedure provided in Section 22 of the *JBNQA* and federal and provincial impact assessment and review.

113. None of the Defendant forestry companies has submitted its forestry project descriptions to Defendants the Provincial and Federal Administrators or to the Federal Minister of the Environment, in further breach of Section 22 of the *JBNQA*. Defendant forestry operations cannot proceed until the completion of such environmental assessment and review processes.

114. Defendants the AGQ, the AGC, the Provincial and Federal Administrators and the Federal and Québec Ministers of the Environment are under legal obligations to immediately carry out, or have carried out, mandatory environmental and social impact assessment and review under the *JBNQA* with respect to the present and any proposed forestry operations in Eenou Astchee, but said Defendants have failed to carry out those legal obligations.

115. These omissions of the Defendants mentioned in the immediately preceding paragraph to comply with the environmental process in the issuance of CAAFs constitute breaches of the Agreement-in-Principle and the *JBNQA* and the CAAFs of Defendants are consequently illegal, constitutionally inapplicable and unopposable to Plaintiffs and inoperative in Eenou Astchee.

116. Furthermore, these Defendants have failed in their trust, fiduciary and administrative obligations to properly consult the James Bay Advisory Committee on the Environment provided for in Section 22 of the *JBNQA* and to consult Plaintiffs in relation to major changes in land and resource use in the *JBNQA* Territory.

B. Chapter II of the *EQA*

117. Under reserve of the priority of the *JBNQA*, Defendants the AGQ, the Québec Minister of the Environment and the Provincial Administrator have breached and continue to breach section 153 of the *Environment Quality Act*, R.S.Q., c. Q-2 (*EQA*), in that they systematically have failed and fail to subject the forestry operations of Defendant forestry companies to the social and environmental impact assessment and review procedure provided for in Chapter 2 of the *EQA*, to which they are subject by virtue of Schedule A thereof.

118. Defendant forestry companies have not submitted their present and proposed forestry project descriptions to the Minister of the Environment and Wildlife, in breach of section 155 of the *EQA*.

119. These provisions of the *EQA* also apply to present and proposed forestry operations in Eenou Astchee, including those of Defendant forestry companies, and the forestry operations of Defendant forestry companies cannot in any event proceed any further until satisfactory completion of the *EQA* environmental assessment and review process.

120. Schedule B of the *EQA* provides at paragraph h) that all forestry development when included in plans provided for in the *Forest Act* are automatically exempt from the assessment and review procedure, in violation of the Agreement-in-Principle and of the *JBNQA*. Paragraph h) of Schedule B of the *EQA* is consequently illegal, constitutionally inapplicable and unopposable to Plaintiffs and inoperative in Eenou Astchee.

C. Section 22 of the *EQA*

121. In addition, present and proposed forestry activities on Eenou Astchee result in the contamination or change in the quality of the environment, which therefore requires a Certificate of Authorization from the Minister of Environment pursuant to section 22 of the *EQA*, which Defendant forestry companies have failed to obtain, and Defendant the AGQ and Defendant the Québec Minister of the Environment have failed to enforce.

122. The Regulation respecting the application of the *Environment Quality Act*, O.C. 1529-93, G.O.Q. 1993 II, 5996, provides at section 2(13) that forest management activities within the meaning of section 3 of the *Forest Act* are exempt from the application of the first paragraph of section 22 of the of the Environment Quality Act, subject to some exemptions. Section 2(13) of the Regulation respecting the application of the *Environment Quality Act* violates the *JBNQA* and is consequently illegal, constitutionally inapplicable and unopposable to Plaintiffs and inoperative in Eenou Astchee.

123. In addition to the other grounds set forth herein, all CAAFs issued to Defendant forestry companies are null and void as being in violation of the *EQA* and Plaintiffs reserve their right to seek injunctive relief under section 19.1 of the *EQA*.

D. Right to a Healthy Environment

124. Furthermore, the forestry activities of Defendants in Eenou Astchee, whether purportedly authorized or not, violate Plaintiffs' rights to a healthy environment and to its protection, and to the protection of the living species in it and Plaintiffs reserve their right to seek injunctive relief under section 19.1 of the *EQA*.

E. Federal Processes in addition to the Specific *JBNQA* Process

(a) *Environmental Assessment Review Procedure (EARP)*

125. All forestry operations conducted from June 21st, 1984 to January 19th, 1995 in Eenou Astchee by Defendant forestry companies were subject to the federal *Environmental Assessment and Review Process Guidelines Order* (*EARP*), but Defendant the AGC and Defendant the federal Minister of the Environment failed, refused or neglected to implement *EARP*.

126. Defendant AGC and Defendant Minister of the Environment were aware of the execution of CAAFs, and of the forestry operations in Eenou Astchee, but refused or failed to implement their obligations to subject forestry operations affecting Plaintiffs and Plaintiffs' rights to federal environmental laws of general application as required by Chapter 22 of the *JBNQA*.

127. Every proposed forestry project of Defendant forestry companies constituted a "proposal" within the meaning of *EARP* by virtue of the *JBNQA* and violated the constitutionalized aboriginal and treaty rights of Plaintiffs, the federal Crown's trust or fiduciary obligations and section 91(24) of the *Constitution Act, 1867*.

(b) *Canadian Environmental Assessment Act (CEAA)*

128. Present and proposed forestry operations of Defendant forestry companies in Eenou Astchee, including CAAFs, permits and authorizations issued and to be issued, are, since January 19, 1995, subject to the environmental and social assessment procedure set out in the *Canadian Environment Assessment Act*, R.S.C. 1985, c. C-15.2 ("*CEAA*"), but to this date Defendant the AGC and Defendant Minister of the Environment have refused, neglected or failed to implement the *CEAA* with respect to forestry operations in Eenou Astchee.

129. Pursuant to Chapter 22 of the *JBNQA*, the constitutionalized aboriginal and treaty rights of Plaintiffs, the federal Crown's trust or fiduciary obligations, section 91(24) of the *Constitution Act, 1867* and section 5 of the *CEAA*, Defendants the AGC and the federal Minister of the Environment were and are bound to carry out public reviews with respect to forestry activities prior to the issuance of CAAFs and other permits and authorizations by the AGQ, but to this date said Defendants continue to fail to do so.

14. Subsidiarily, Breaches of *An Act respecting the Lands in the Public Domain*, the *Forest Act* and Regulations thereunder

130. Subsidiarily, and under strict reserve of and without prejudice to the rights and recourses of Plaintiffs mentioned above and to all the arguments raised above and only to the extent constitutionally applicable, forestry operations of Defendant forestry companies and the actions and omissions of Defendant the AGQ in respect thereof within Eenou Astchee violate the provisions of the Québec *Forest Act* and of *An Act respecting the Lands in the Public Domain* and regulations thereunder.

(A) *An Act respecting the Lands in the Public Domain*

131. Pursuant to *An Act respecting the Lands in the Public Domain,* Defendant the Minister of Natural Resources was to prepare a land use plan for the "James Bay Region", which substantially coincides with Eenou Astchee, but the said Defendant failed to carry out his duty.

132. This failure of Defendant the AGQ has entailed a further failure to truly and properly consult Plaintiffs in a proactive and a participatory manner with respect to such plan.

133. Such plan, when approved, would have at least provided a framework for various activities in Eenou Astchee, notably forestry activities and the failure to adopt such plan has left a vacuum allowing Defendant forestry companies to carry out their activities as they desire, without effective control, as their commercial interests dictate from time to time and in flagrant disregard for the rights of Plaintiffs, the *JBNQA*, related legislation and even laws of general application.

(B) *Forest Act* and *Regulation Respecting Standards of Forest Management for Forests in Public Domain*

134. The forestry activities of Defendant forestry companies in Eenou Astchee have been and are carried out without regard for the provisions of the *Forest Act*, R.S.Q., c. F4.l and of a regulation entitled *Standards of Forest Management for Forest in the Public Domain*, O.C. 1627-88 with respect to environmental protection, preservation of wildlife and ecological habitat and resources, protection of harvesting of wildlife resources and hunting and recreational uses of forests as well as protection of cultural and historic sites.

135. The consultation mechanism provided by the *Forest Act* with respect to forestry management plans is not being respected by Defendant forestry companies, is ill-conceived and does not constitute proper consultation of Plaintiffs.

15. Special Status

136. The legislative framework of the *Forest Act* is such that Plaintiffs are effectively deprived of the special status and involvement over and above that provided for the general public contemplated by 22.2.2c) of the *JBNQA* in regard to forestry activities in Eenou Astchee.

16. The Forestry Resource Development Agreements (FRDA) and the Economic Regional Development Agreements (ERDA)

137. Defendants AGQ and AGC and Defendant Minister of the Federal Office of Regional Development, Québec, breached the *JBNQA*, as well as the aboriginal and treaty rights of Plaintiffs by entering into FRDA and ERDA, in a manner that breached the *JBNQA* and their obligation to protect the aboriginal and treaty rights of Plaintiffs.

17. The *Navigable Waters Protection Act*

138. Defendant forestry companies have not obtained the necessary approvals required under the *Navigable Waters Protection Act* and are in breach of section 21 thereof related to the throwing or depositing of rubbish liable to interfere with navigation. Some of the forestry operations are obstacles and obstructions to navigation in violation of the *Navigable Waters Protection Act*.

139. Defendants the AGC and Minister of Transport have failed to enforce the *Navigable Waters Protection Act* in Eenou Astchee which they are obliged to do.

18. Breach of Trust or Fiduciary Obligations by Defendants the AGC and the AGQ

140. Defendants the AGC and Minister of Indian and Northern Affairs and Defendant AGQ have trust or alternatively fiduciary obligations towards Plaintiffs respecting the rights and interests of Plaintiffs and the protection thereof in respect to the forestry resources of Eenou Astchee, which obligations these Defendants have breached and continue to breach.

141. Moreover, in virtue of the aboriginal and treaty rights of Plaintiffs, the *JBNQA*, the *Constitution Acts, 1867* and *1982*, the *1912 Québec Boundaries Extension Acts*, as well as at common law, Defendants the AGC and the AGQ have owed and owe Plaintiffs *sui generis* trust or fiduciary obligations to ensure the preservation and protection of their aboriginal rights and of their treaty rights under the *JBNQA* in respect to the forestry

resources of Eenou Astchee, which these Defendants have individually and collectively breached.

19. Cree Representations to Defendants

142. Starting July 7, 1978, the above described contraventions and inadequacies of the Québec forestry system and the failures of Defendants have been repeatedly communicated by Plaintiffs to Defendants in letters, reports, briefs as well as, verbally, in meetings and through Cree participation in various committees, and Defendant the AGQ has at numerous times acknowledged the concerns and problems raised by Plaintiffs as well as its degree of responsibility to protect and respect Plaintiffs and Plaintiffs' rights, but has failed to take any significant measures in this respect.

143. The omissions of Defendants, their political-industrial collusion, the continuous breach of Plaintiffs' rights, the failure of Defendants to respect Plaintiffs' rights despite periodic and sustained negotiations between Plaintiffs and Defendants the AGQ and the AGC, as well as the absence of concrete implementation and corrective measures in order to give effect to Plaintiffs rights have left Plaintiffs with no other effective remedy than to seek redress from this Court.

20. Right to Injunctive Relief

144. Plaintiffs are entitled to injunctive relief to obtain the cessation of all forestry activities of Defendant forestry companies in Eenou Astchee.

21. Damages sustained by Plaintiffs

145. As a result of Defendants' various breaches and illegal actions and omissions in relation to forestry as described in the present declaration, Plaintiffs have suffered and continue to sustain extensive damages and prejudice.

146. The damages suffered by Plaintiffs to their customs, traditions, values, way of life, culture, spiritual links to Eenou Astchee and use and special relationship with their lands and resources are irreparable. However, in addition, Plaintiffs have been illegally deprived of the value of the forestry resources illegally extracted from Eenou Astchee and Plaintiffs are entitled to claim from Defendants at least the net value of such resources, under reserve of their claims for those other damages which are compensable.

147. In addition, the said Plaintiffs are entitled to recover and are hereby claiming from the said Defendants exemplary damages pursuant to the *Tree Protection Act* in the amount of $200 per tree cut since November 11, 1975, and Defendant forestry companies are hereby called upon to provide an account of same within three (3) months of the service of the present action failing which a Court order will be sought ordering the Defendant forestry companies to provide same.

148. All individually listed Plaintiffs have suffered and continue to suffer losses from the actions and omissions of Defendants and are entitled to a share of the amounts claimed below, under reserve of their claims for those other damages which are compensable.

149. Under strict reserve of their rights to claim additional amounts, Plaintiffs are entitled to damages of at least $300 million solidarily from Defendants for breaches of their aboriginal and treaty rights in regard to the value of a portion of the forestry resources extracted from Eenou Astchee by Defendants companies with the concurrence of Defendants the AGQ and the AGC.

150. All Plaintiffs are alternatively entitled to the specific performance by Defendants AGC, AGQ and SDBJ of their obligations under the *JBNQA* and to the restoration of the environment of Eenou Astchee by all Defendants under reserve of their claims for additional compensable damages.

151. Defendants the AGC and the AGQ have also breached their trust or fiduciary obligations to Plaintiffs, for which Plaintiffs are entitled to a further amount of at least $200 million.

WHEREFORE, PLAINTIFFS PRAY THIS HONOURABLE COURT TO:

MAINTAIN Plaintiffs' action, and

DECLARE that:

A) The Cree Nation, Plaintiff Cree First Nations and individual Plaintiffs have existing aboriginal rights and rights under international law respecting the use of the land and the beneficial and other use of the forestry resources in Eenou Astchee being the area of land situated in the Province of Québec and elsewhere between approximately parallels 48° and 56°30' of latitude north and meridians 82° to 68° west, less the area of land in Québec situated between approximately parallels 48° and 52° of latitude north and meridians 71°

to 68° west, and less certain other areas south and east of the height of land, comprising some 175,000 square miles of land, known as Eenou Astchee.

B) The Cree Nation, Plaintiff Cree First Nations and individual Plaintiffs have existing aboriginal rights to continue and exercise Cree use of the land and resources in Eenou Astchee as particularly described in paragraphs 32 to 37 of the Declaration.

C) Plaintiff the Oujé-Bougoumou Cree Nation has specific aboriginal rights respecting the land and resources, including forestry resources described in paragraph 6 of the Declaration, in part jointly with the Cree Nation of Mistissini, including its members and their ancestors.

D) The Cree Nation, Plaintiff Cree First Nations and individual Plaintiffs have the right to hunt, fish and trap (harvest) and to carry on accessory activities throughout Eenou Astchee as well as the right to sufficient habitat for that purpose.

E) Plaintiffs have rights in, on, under and over the forests, trees and other natural resources of Eenou Astchee.

F) Plaintiffs (except for Plaintiff the Oujé-Bougoumou Cree Nation and its members), also have Treaty rights under the *JBNQA* in, on, under and over that part of Eenou Astchee contemplated by the *JBNQA* and in, on, under and over the forests and trees in and on Eenou Astchee.

G) The aboriginal, treaty and other rights of Plaintiffs are constitutionally protected and take precedence, condition and are a burden and encumbrance upon any rights of Defendants in, on, under and over Eenou Astchee including the natural resources thereof, notably the forests and the trees.

H) Neither the National Assembly nor the Government of Québec has the ownership, jurisdiction, authority or control over the natural resources, including the forests, in the Territory contemplated by the *James Bay and Northern Quebec Agreement* or in all of Eenou Astchee.

I) Defendants have all breached the aboriginal and treaty rights of Plaintiffs in respect to Eenou Astchee and the forestry resources thereof and the rights of Plaintiffs under international law.

J) Defendant the AGQ has breached and is continuing to breach his obligations to Plaintiffs under the *Constitution Act, 1982*, the *James Bay and Northern Quebec Agreement*, an *Act approving the Agreement concerning James Bay and Northern Quebec*, the *Forest Act*, the *Act Respecting Lands in the Public Domain* and the *Environment Quality Act*.

K) The amendment made by the AGQ on or about April 1, 1987 to Annex B to the *Environment Quality Act*, R.S.Q., c. Q-2, purportedly to exclude forestry development when included in plans provided for in the *Forest Act* is illegal, null and void, and unconstitutional, and subsidiarily at the very least constitutionally inapplicable to Plaintiffs;

L) Defendants the AGC and the AGQ are in breach of their constitutional, treaty, statutory, contractual, trust and fiduciary duties to protect Plaintiffs' rights and interests in respect of forests and of forestry activities in Eenou Astchee.

M) Forestry activities generally, including those of Defendants, in Eenou Astchee, are and at all relevant times were subject to Cree consent in virtue of both the *JBNQA* and other rights.

N) Forestry activities generally, including those of Defendants, and forestry management plans purporting to apply to Eenou Astchee are subject to the rights of Plaintiffs and subject to the prior application of the *JBNQA*.

O) The *Forest Act*, the *Act respecting Lands in the Public Domain*, all regulations thereunder and all CAAFs and authorizations issued pursuant to the *Forest Act* to Defendants are unconstitutional, null and void, or constitutionally inoperative in respect to Plaintiffs and their rights and in respect to Eenou Astchee.

O) The system of forestry management units and common areas and all CAAFs in Eenou Astchee are unconstitutional, null and void.

P) All forestry management plans as adopted and approved by Defendant the AGQ, are unconstitutional, illegal, null and void.

Q) All past and proposed forestry operations, the proposed construction of forestry roads or extensions thereto and the proposed construction of forestry camps in Eenou Astchee:

a) are automatically subject to federal and provincial environmental and social impact assessment and review procedures under Section 22 of the *JBNQA*, and;

b) are subject to the issuance, where warranted and where the preceding paragraph has been satisfied, of Certificates of authorization under section 22 of the *Environment Quality Act*;

R) Defendant **the AGQ is:**

a) in breach of the *JBNQA*, the aboriginal and treaty rights of Plaintiffs and the *Environment Quality Act* in regard to the issuance of the said CAAFs;

b) in breach of his trust or fiduciary obligations to protect and preserve the rights and interests of Plaintiffs in respect to the issuance of the said CAAFs and the forestry activities of Defendants;

c) in breach of Plaintiffs' rights to a healthy environment and to the protection of the living species inhabiting it as provided in the *Environment Quality Act*.;

S) Defendant **the AGC is** in breach of his trust or fiduciary obligations to Plaintiffs in respect to Québec forestry legislation and forestry activities of Defendants.

ISSUE an order of ***mandamus*** enjoining Defendants the AGQ, the AGC and the Provincial and Federal Administrators and Defendant Ministers to perform immediately the following duties:

A) respect the aboriginal and treaty rights and other rights of the Plaintiffs and the *JBNQA* in respect to all matters under their responsibility relating to the forestry resources of Eenou Astchee.

B) apply the environmental assessment procedure as set out in Section 22 of the *JBNQA* in respect to any present or proposed forestry activities of Defendant forestry companies in Eenou Astchee, including any issues relating to purported existing CAAFs.

C) in the alternative to the unconstitutionality or constitutional inapplicability thereof, enforce the provisions of the *Forest Act* and the *Act respecting the Lands in the Public Domain* in respect to the issuance of CAAFs and forestry activities of Defendants, and effectively take into account the rights of Plaintiffs.

D) in the further alternative, enforce the provisions of the *Environment Quality Act* relating to the rights of Plaintiffs to a healthy environment and the protection of the living species.

ISSUE an order of *mandamus* enjoining Defendants the AGC, the Minister of Indian Affairs and Northern Development and the AGQ to carry out their trust or fiduciary obligations to Plaintiffs and to ensure and enforce respect for the aboriginal and treaty rights of Plaintiffs in regard to Eenou Astchee and the forestry resources thereof.

ISSUE an order of *certiorari* quashing the decisions of Defendant the AGQ to execute the CAAFs described herein with Defendant forestry companies in Eenou Astchee.

ISSUE an order of *prohibition* restraining Defendant the AGQ from executing further CAAFs with Defendants and with any other forestry company in Eenou Astchee.

ISSUE a permanent order of injunction against Defendant forestry companies, their officers, ministers, directors, employees, agents and servants and those acting in concert with them and those purportedly authorized by them to carry out or engage into any work relating to forestry activities or proposed forestry activities on Eenou Astchee, without the consent of Cree Plaintiffs and to immediately cease, desist and refrain from carrying out any works, operations or activities in connection with forestry and proposed forestry work, including any preliminary works, surveys, the construction of exploration camps and forest camps, the construction of any roads, dams, structures, dykes and bridges and connected works on Eenou Astchee.

The said injunctions be declared mandatory, final, permanent and absolute, subject to Plaintiffs' other recourses, including damages.

SUBSIDIARILY AND UNDER STRICT RESERVE OF THE ABOVE, ISSUE an order of injunction against Defendant forestry companies:

i) to submit all present and proposed forestry activities to federal and provincial environmental impact assessment and review contemplated by the *JBNQA* and the *Environment Quality Act* and federal legislation;

ii) to apply for all applicable environmental authorizations in respect to forestry operations in Eenou Astchee;

iii) not to proceed with any forestry work, including the construction of any road, unless and until all such applicable environmental authorizations have been obtained.

CONDEMN Defendants solidarily to pay Plaintiffs as partial damages the amount of $300 million in respect to the value of a portion of the forestry resources already extracted from Eenou Astchee as well as exemplary damages of $200 per tree cut since November 11, 1975 under reserve of Plaintiffs' claims for additional and other past damages.

CONDEMN Defendants the AGC and the AGQ solidarily to pay Plaintiffs the additional amount of $200 million for breach of trust or fiduciary obligations to Plaintiffs.

THE WHOLE UNDER RESERVE of the authority and jurisdiction of Plaintiffs, and under reserve of and without prejudice to the legal proceedings pending in this Court under the numbers 500-05-004330-906 and 500-05-017463-934 and the legal proceedings pending in the Federal Court of Canada under the numbers T-962-89, T-1913-90 and T-3007-93 and the positions of Plaintiffs therein.

THE WHOLE WITH COSTS against Defendants, including the costs of all Exhibits, expertise and expert evidence which may be required and under reserve of Plaintiffs' rights to take such other conclusions and such further proceedings as to them in law and justice appertain in the premises.

MONTRÉAL, this 15th day of July, 1998.

(S) O'REILLY & ASSOCIÉS

O'Reilly & Associés
Attorneys for Plaintiffs

Counsel: Robert Mainville et Associés
et Hutchins, Soroka & Dionne

TRUE COPY

O'REILLY & ASSOCIÉS
Attorneys for Plaintiffs

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
No.: 500-05-043203-981

SUPERIOR COURT

MARIO LORD,
-and-
CHIEF JOHN KITCHEN, suing personally and, in conjunction with Applicant Grand Chief Matthew Coon Come, on behalf of and as a representative of the Cree Nation of Waswanipi,
-and -
CHIEF GEORGE WAPACHEE, suing personally and, in conjunction with Applicant Grand Chief Matthew Coon Come, on behalf of and as a representative of the Nemaska First Nation,
-and-
CHIEF-DR. BILLY DIAMOND, suing personally and, in conjunction with Applicant Grand Chief Matthew Coon Come, on behalf of and as a representative of the Waskaganish First Nation,
-and-
FORMER CHIEF WILLIAM MIANSCUM, suing personally and, in conjunction with Grand Chief Matthew Coon Come, on behalf of and as a representative of certain Ndoho Ouchimauch and Ndoho Eenouch of Mistissini,
-and-
CHIEF KENNY LOON, suing personally and, in conjunction with Applicant Grand Chief Matthew Coon Come, on behalf of and as a representative of the other members of the Cree Nation of Mistissini,
-and-
CHIEF ABEL BOSUM, suing personally and, in conjunction with Applicant Grand Chief Matthew Coon Come, on behalf of and as a representative of the Oujé-Bougoumou Cree Nation,
- and-
GRAND CHIEF MATTHEW COON COME, suing personally and on behalf of the Cree Nation (James Bay Crees),
-and-
VIOLET PACHANOS,
-and-
THE CREE NATION OF WASWANIPI (BAND),
-and-
THE NEMASKA FIRST NATION (BAND),
-and -
THE WASKAGANISH FIRST NATION, (BAND)
- and-
THE CREE NATION OF MISTISSINI (BAND),
-and-
THE OUJÉ-BOUGOUMOU CREE NATION,
-and-
THE GRAND COUNCIL OF THE CREES (EEYOU ISTCHEE) (GRAND COUNCIL OF THE CREES (OF QUEBEC)),
-and-
THE CREE REGIONAL AUTHORITY,
-and-

CREE TRAPPERS' ASSOCIATION,
-and-
EDWARD GILPIN,

Plaintiffs-**APPLICANTS**

-VS-

THE ATTORNEY-GENERAL OF QUÉBEC,
-and -
THE ATTORNEY-GENERAL OF CANADA,
-and -
THE PROVINCIAL ADMINISTRATOR UNDER SECTION 22 OF THE *JAMES BAY AND NORTHERN QUEBEC AGREEMENT*,
-and-
THE FEDERAL ADMINISTRATOR UNDER SECTION 22 OF THE *JAMES BAY AND NORTHERN QUEBEC AGREEMENT*,
-and-
THE HONOURABLE PAUL BÉGIN,
-and-
THE HONOURABLE CHRISTINE STEWART,
-and-
THE HONOURABLE JANE STEWART,
-and-
THE HONOURABLE JOHN MANLEY,
-and-
THE HONOURABLE DAVID M. COLLENETTE,
-and-
THE HONOURABLE GUY CHEVRETTE (NOW THE HONOURABLE JACQUES BRASSARD),
in his capacity as Minister of Natural Resources,
-and-
LA SOCIÉTÉ DE DÉVELOPPEMENT DE LA BAIE JAMES,
- and -
REXFOR,
-and-
DOMTAR INC.,
-and-
PRODUITS FORESTIERS DONOHUE INC. (which includes the company formerly known as Produits Forestiers Saucier Inc.),
-and-
BARRETTE-CHAPAIS LTÉE,
-and-
TEMBEC INC.,
-and-
LES CHANTIERS DE CHIBOUGAMAU LTÉE,
-and-
NORMICK-PERRON INC.,
-and-
LES INDUSTRIES NORBORD INC.,
-and-
ABITIBI-CONSOLIDATED INC. (formerly known as Stone-Consolidated Corporation and as Abitibi-Price and as Consolidated Bathurst),

-and-
MATÉRIAUX BLANCHET INC.,
-and-
SCIERIE AMOS INC.,
-and-
SCIERIE GALLICHAN INC.,
-and-
FILIFOR INC.,
-and-
IPB INTERNATIONAL INC.,
-and-
SCIERIE LANDRIENNE INC.,
-and-
BOIS KMS (GMI) LTÉE,
-and-
FOURNITURES MINIÈRES SIMARD INC.,
-and-
SCIERIE SENCO LTÉE,
-and-
PRODUITS FORESTIERS ALLIANCE INC.
-and-
OPTIBOIS INC. (formerly known as 2541-3998 QUÉBEC INC. (PRÉCIBOIS)),
-and-
PANNEAUX CHAMBORD INC.,
-and-
KRUGER INC.,
-and-
LE GROUPE FOREX INC.,
-and-
FOREX INC.,
-and-
BISSON ET BISSON INC.,
-and-
HOWARD - BIENVENUE INC.,
-and-
COMPAGNIE INTERNATIONALE DE PAPIER DU CANADA,

Defendants (Mis-en-cause except for Respondents)

-AND-

THE PROVINCIAL ADMINISTRATOR UNDER SECTION 22 OF THE JAMES BAY AND NORTHERN QUEBEC AGREEMENT,
-and-
THE FEDERAL ADMINISTRATOR UNDER SECTION 22 OF THE *JAMES BAY AND NORTHERN QUEBEC AGREEMENT*,
-and-
THE HONOURABLE PAUL BEGIN, in his capacity as the Quebec Minister of the Environment,
-and-
THE HONOURABLE CHRISTINE STEWART, in her capacity as Minister of the Environment of Canada,
-and-

THE HONOURABLE GUY CHEVRETTE (NOW THE HONOURABLE JACQUES BRASSARD), in his capacity as Minister of Natural Resources,
-and-
THE HONOURABLE JANE STEWART, in her capacity as Minister of Indian Affairs and Northern Development,

DEFENDANTS-RESPONDENTS

MOTION FOR INTERLOCUTORY INJUNCTIONS AND OTHER PROVISIONAL REMEDIES
(Arts 2, 20, 46, 751 and ff. CCP)

The Applicants

1. Applicants sue herein under reserve of and without prejudice to the legal proceedings pending in this Court under the number 500-05-004330-906 and the legal proceedings pending in the Federal Court of Canada under the numbers T-962-89 and T-1913-90 and the positions of Plaintiffs therein.

2. These proceedings seek interlocutory injunctions and other provisional remedies from this Court relating especially to environmental and social impact assessments of forestry operations and activities in part of the territory contemplated by the *James Bay and Northern Québec Agreement* as amended (herein the *JBNQA*) and to imminent ministerial approval of new or revised forest management plans which are not in conformity with the *JBNQA* and which do not respect treaty rights under the *JBNQA* nor the trust or fiduciary obligations of Respondents.

3. The territory contemplated by these proceedings is part of the Cree traditional territory (Eenou Astchee). It comprises basically that part of Eenou Astchee which is contemplated by the *JBNQA* below 51° 30' of latitude north to the southern limits of the Cree traplines as well as certain Mistissini and Oujé-Bougoumou traplines (herein the Territory). This Territory includes the areas where forest management plans are to be submitted shortly for approval by Respondent Minister of Natural Resources.

4. In these proceedings, subject to paragraph 5 hereof, individual Applicants rely on the *JBNQA*, the treaty rights therein and related legislation including environmental legislation under reserve of their aboriginal and other rights not expressly pleaded herein.

5. Applicant the Oujé-Bougoumou Cree Nation is neither a party to the *JBNQA* nor any other treaty nor a band corporation under the *Cree-Naskapi (of Quebec) Act*. Applicant the Oujé-Bougoumou Cree Nation and Applicants the members thereof do not invoke any treaty rights herein and any reference to the treaty rights of Applicants or to rights or procedures under the *JBNQA* herein excludes Applicants the Oujé-Bougoumou Cree Nation and its members and the area of land described in paragraph 6 of the Declaration including the natural resources thereof in regard to the Oujé-Bougoumou Cree Nation. However, all references herein to aboriginal rights of Applicants include the Oujé-Bougoumou Cree Nation and its members and the area of land described in paragraph 6 of the Declaration including the natural resources thereof.

6. Individual Applicants, including those on whose behalf and for whose benefit Grand Chief Matthew Coon Come and Applicant Chiefs sue in the present proceedings, are all Aboriginal persons of Cree ancestry, all Indians and Aboriginal Peoples within the meaning of sections 91(24) of the *Constitution Act, 1867* and the *Constitution Act, 1982* (as amended), all part of the Cree Nation in Québec and, subject to paragraph 5, all James Bay Crees (Eenouch) and beneficiaries under the *JBNQA*.

7. Applicants the Cree Nation of Waswanipi (band), the Nemaska First Nation (band), the Waskaganish First Nation (band) and the Cree Nation of Mistassini (band) form part of the Cree Nation, are signatories to the *JBNQA* and also are band corporations incorporated under the *Cree-Naskapi (of Québec) Act* with the functions and powers there described, and the members of which are considerably affected by forestry activities and operations.

8. Applicant the Grand Council of the Crees (Eeyou Istchee) (herein the GCCEI), also known as the Grand Council of the Crees (of Québec), is a signatory of the *JBNQA* and acts on behalf of the James Bay Crees as defined in the *JBNQA* in respect to the implementation of the *JBNQA* and related legislation.

9. Applicant the Cree Regional Authority also acts as a representative of the James Bay Crees for certain purposes relating to the *JBNQA* and related legislation, is the Cree native party described therein and appoints members to various committees contemplated by the *JBNQA* and the *Environment Quality Act*.

10. The Cree Trappers' Association has existed as an organized entity since prior to the *JBNQA* and was formally constituted pursuant to the *JBNQA*. Applicant Edward Gilpin is a trapper and President of the Cree Trappers' Association. The objects of the Cree Trappers' Association include a) the conservation of fur-bearing animals as a renewable natural resource, and b) assisting Ndoho Ouchimauch and Ndoho Eenouch (also

sometimes referred to as tallymen, hunters, fishermen and trappers) to protect their rights and interest and to promote their way of life, values and activities and traditions.

11. Grand Chief Matthew Coon Come sues personally and on behalf of the Cree Nation comprehensively and on behalf of the individual members thereof, the James Bay Crees (Eenouch), who are also members of Applicants the GCCEI and the CRA.

The Respondents

12. Respondent the Provincial Administrator under Section 22 of the *JBNQA* exercises certain functions and has various responsibilities under Section 22 of the *JBNQA*, including those involving provincial matters and relating to forestry activities which are the object of these proceedings.

13. Respondent Minister Paul Bégin is the Provincial Minister of the Environment who is charged with various functions and responsibilities, including those related to the forestry activities involving provincial matters and which are the object of these proceedings, pursuant to the *Environment Quality Act* but subject to the *JBNQA*.

14. Respondent the Federal Administrator under Section 22 of the *JBNQA* exercises certain functions and has various responsibilities under Section 22 of the *JBNQA*, including those related to the forestry activities which are the object of these proceedings, which forest activities involve federal matters.

15. Respondent the federal Minister of the Environment, under the *Canadian Environmental Assessment Act* (*C.E.A. Act*), is also charged with the various functions and responsibilities pursuant to the *JBNQA* and that Act and, subject to the *JBNQA*, pursuant to federal laws of general application. Such functions and responsibilities include environmental and social impact assessment and review and approvals in respect to the forestry activities which are the object of these proceedings, which forest activities involve federal matters. Moreover, Respondent the federal Minister of the Environment also has trust or fiduciary obligations to Cree Applicants.

16. Respondent the Honourable Minister of Natural Resources of Québec has constitutional, statutory, public, treaty and trust obligations and duties to ensure that the forestry regime, the Timber Supply and Forest Management Agreements (herein the CAAFs) and forest management plans and permits respect the rights of Cree Applicants, the provisions of the *JBNQA* and the implementation thereof and Cree use of the land, Cree activities and Cree values, culture, traditions, customs and practices as described herein.

17. Respondent the Honourable Jane Stewart has trust or fiduciary obligations to Applicants to ensure respect for the rights of Cree Applicants, the provisions of the *JBNQA* and the implementation thereof and Cree use of the land, Cree activities and Cree values, culture, traditions, customs and practices as described herein.

The James Bay and Northern Québec Agreement

18. The *JBNQA* was executed on November 11, 1975 and was approved, given effect to and declared valid by *An Act approving the Agreement concerning James Bay and Northern Québec*, 1976 Statutes of Québec, chapter 46, and the *James Bay and Northern Québec Native Claims Settlement Act* (1976-77, 25-26 Eliz. II, c. 32).

19. Pursuant to sections 25, 35 and 52 of the *Constitution Act, 1982* as amended, the rights of the Cree beneficiaries under the *JBNQA* are constitutional rights which are affirmed, recognized, guaranteed, entrenched and protected under the Constitution of Canada and the Agreement itself is a treaty.

20. The *JBNQA* was preceded by an Agreement-in-Principle (herein the AIP) executed on November 15, 1974 by Applicant the Grand Council of the Crees (of Quebec) (GCCEI), the Northern Quebec Inuit Association, Defendant the Attorney General of Québec, the James Bay Energy Corporation, Defendant the James Bay Development Corporation, Hydro-Québec and Defendant the Attorney General of Canada, setting forth several basic principles incorporated and reflected in the *JBNQA* of November 11, 1975, as appears from the Agreement-in-Principle, a copy of which is communicated to the Respondents as Exhibit **R-1**.

21. The AIP to the extent that it is not inconsistent with the *JBNQA*, binds the parties thereto and assists in the interpretation of the spirit and intent of the *JBNQA*.

22. Under the AIP, and notably paragraph 12 thereof, all development of renewable and non-renewable resources (thus including forestry), was contemplated as being made subject to environmental and social impact assessment and regulations as part of the protection and guarantee, *inter alia*, of hunting, fishing and trapping rights of the Crees (Eenouch) against future development.

23. The *JBNQA* has as a fundamental purpose and provides for, and the parties thereto intended, that the way of life, culture, customs, practices, values and tradition of the Crees (Eenouch) would continue and be protected through the *JBNQA*.

24. The *JBNQA* is a treaty, the spirit and intent and fundamental purpose of which was to ensure the continuation and guarantee of the way of life, culture, values and traditions of the James Bay Crees (Eenouch) while providing for some sharing of certain natural resources in conformity with a fully implemented *JBNQA* and in accordance with the guiding principles thereof.

25. The premises on which Cree consent to the *JBNQA* was given, and without which the James Bay Crees (Eenouch) would not have executed it, were that the James Bay Crees (Eenouch) could indefinitely continue, if they so wished, their traditional way of life, that the James Bay Crees (Eenouch) retained their Aboriginal rights, that they were vested with treaty rights in respect to the land and forestry and other natural resources, and that the natural resources and habitat essential for these purposes would continue to be available to the James Bay Crees (Eenouch).

26. The aboriginal rights of the James Bay Crees (Eenouch), including Applicants, in respect to the use of the land and all natural resources were recognized and confirmed by and partially incorporated in the *JBNQA*.

27. Various sections of the *JBNQA*, and especially sections 2, 4, 5, 22, 24, 28 and 30 thereof, recognize, confirm and provide for Cree (Eenou) harvesting rights and use of the land in the territory contemplated by the *JBNQA*.

The environmental and social protection regime under the *JBNQA* and under the *Environment Quality Act* of Québec and under the *C.E.A. Act*, and trust and fiduciary obligations

28. Section 22 of the *JBNQA* explicitly provides for a unique and particular environmental and social protection regime, including environmental and social impact assessment and review of development and development projects.

29. Section 22 of the *JBNQA* is expressly made one of the means by which Cree treaty rights under section 24 of the *JBNQA* will be guaranteed and protected, as mentioned in sub-section 24.11 of the *JBNQA*. Section 24 of the *JBNQA* notably recognizes and provides for Cree use of and harvesting and other rights in Eenou Astchee, the continuance of the Cree tenure and trapline system, the principle of conservation, the priority of native harvesting and measures to promote and ensure the continuance of traditional Cree use of the land.

30. Section 22 of the *JBNQA* has as an important object the protection of the exercise of Cree use of the land and harvesting rights against the negative impacts of development, including forestry development. However, since the execution of the *JBNQA*, with minor

exceptions, no forestry operations or activities in the Territory, no CAAFs, no general forest management plans, no five-year forest management plans, no annual forest management plans, and no forest annual permits respecting the Territory have been subjected to environmental and social impact assessment and review under Section 22 of the *JBNQA*, the *Environment Quality Act* or the *C.E.A. Act*.

31. The environmental and social protection regimes in Section 22 of the *JBNQA* and in Chapter 2 of the *Environment Quality Act* of Québec provide for environmental and social impact assessment and review procedures to determine whether or not a development should proceed and if so, to minimize the negative environmental and social impacts of development on the Native People and wildlife resources of the territory contemplated by the *JBNQA* and a special status and involvement of the Cree, protection of the rights and guarantees of the Cree established by and in accordance with Section 24 of the *JBNQA* and the protection of the Native People, their economies and the wildlife resources upon which they depend.

32. Moreover, the Respondents must give due consideration to the guiding principles set forth in paragraph 22.2.4 of the *JBNQA* including the guiding principle of minimizing negative environmental and social impacts of development on the Cree and on Cree communities by reasonable means with special reference to those measures proposed or recommended by the impact assessment and review procedure.

33. Forestry and forestry development are contemplated by Section 22 of the *JBNQA*, including the Schedules thereto and are subject to environmental screening and environmental and social impact assessment.

34. Schedule 1 of Section 22 of the *JBNQA* provides that "forestry" which falls in the following categories is automatically subject to assessment:

a) major access roads built for extraction of forest projects,

b) pulp and paper mills or other forestry plants,

c) in general, any significant change in land use substantially affecting more than 25 square miles.

35. Schedule 2 of Section 22 of the *JBNQA* provides that forestry development is exempt from the requirement for impact assessment when included in governmental approved management plans, subject to the provisions of paragraph 22.3.34 of Section 22 of the *JBNQA*. The governmental approved management plans referred to in Schedule

2 of Section 22 of the *JBNQA* are those explicitly approved by the Lieutenant-Governor in Council (or Québec Cabinet). Plans approved by the Minister or Department of Lands and Forests or the Minister or Department of Natural Resources are not governmental approved management plans within the meaning of Schedule 2 of Section 22 of the *JBNQA*.

36. Schedule 1 and Schedule 2 of Section 22 of the *JBNQA* must be read together and given a purposive interpretation in accordance with the other sections of the *JBNQA* and notably in accordance with the principles and provisions of Section 22 of the *JBNQA*.

37. All forest management plans, annual forest management permits, activities or operations in the territory contemplated by the *JBNQA* are subject to the application of the full environmental and social impact assessment process set out in Section 22 of the *JBNQA*. Where such plans, permits, activities or operations have involved or where they involve a significant change in land use substantially affecting more than 25 square miles or where they have involved or involve as well road infrastructure for new development, as referred to in paragraph 4 and 6e) of Schedule 1 of Section 22 of the *JBNQA*, then such forest management plans, permits, activities or operations are automatically, pursuant to paragraph 22.5.1 of Section 22 of the *JBNQA*, subject to the application of the full environmental and social impact assessment process set out in Section 22 of the *JBNQA*.

38. Pursuant to the *JBNQA*, the impact assessment processes set out in Section 22 of the *JBNQA* include the specific federal and provincial processes explicitly provided for in Section 22 of the *JBNQA* and, in addition, the more general environmental processes under federal and provincial legislation, such as the *C.E.A. Act* and the *Environment Quality Act*, are also incorporated to the extent that such legislation is not inconsistent with the *JBNQA*. Such more general environmental processes also contemplate forestry development. The *C.E.A Act* and the *Environment Quality Act* also apply outside the territory contemplated by the *JBNQA*.

39. All forest management plans, permits, activities or operations in the territory contemplated by the *JBNQA* and more particularly those not contemplated by Schedules 1 and 2 of Section 22 of the *JBNQA* are also subject to environmental and social impact assessment if so determined by the Respondent Federal and Provincial Administrators pursuant to paragraph 22.5.5 of the *JBNQA*.

40. Since the coming into force of the *JBNQA*, no governmental approved management plans, as contemplated by Schedule 2 of Section 22 of the *JBNQA* and as contemplated by the parties to the *JBNQA*, have existed and no forestry development has been included in governmental approved management plans within the meaning of Schedule 2 of Section

22 of the *JBNQA*. Such governmental approved management plans required and require the approval of the Lieutenant-Governor in Council and such approval has not been given to any such management plans.

41. Since the coming into force of the *Forest Act* in 1987, all forest management plans, including all annual forest management plans, all annual forest management permits and all activities or operations pursuant to CAAFs or to such plans or permits in the Territory have been and are:

a) subject to the application of the full environmental and social impact assessment process set out in Section 22 of the *JBNQA* and in the *C.E.A. Act* and the *Environment Quality Act*, the latter for the areas outside the JBNQA territory and

b) subject to the trust and fiduciary obligations owed by Respondents to Applicants.

42. In the alternative, to qualify as forestry development included in governmental approved management plans described in Schedule 2 of Section 22 of the *JBNQA*, as a minimum:

a) the Government must have approved a land use plan as well as a forest management plan,

b) the forest management plan must have taken into account the harvesting activities and land use of the Crees and the other guiding principles under paragraph 22.2.4 of the *JBNQA*,

c) the Government must have meaningfully consulted the James Bay Advisory Committee on the Environment described in paragraph 22.3 of the *JBNQA* (herein the JBACE) and must have taken the comments of the JBACE into account if it purported to approve such plans and

d) the Government of Québec, the Department of Lands and Forests and the JBACE must have given due consideration to the guiding principles under paragraph 22.2.4 of the *JBNQA* in deciding whether to approve a plan or in considering and commenting upon such plan.

43. To date, the alleged management plans relating to forestry have not met the criteria or standards referred to in paragraphs 41 and 42 hereof and Respondent Ministers and

Administrators and their predecessors have failed to ensure that the management plans have taken into account the harvesting activities and land use of the Crees, have failed to ensure that the JBACE has been meaningfully consulted, have failed to ensure that the principles of paragraph 22.2.4 of the *JBNQA* have been applied in respect to alleged management plans relating to forestry in the territory contemplated by the *JBNQA*, and have failed to respect and implement the trust or fiduciary obligations of Respondents in regard to such management plans.

44. In addition, Section 22 of the *JBNQA* contemplates a complementary form of environmental and impact screening and assessment of all forest plans, including all annual forest management plans, conducted by the JBACE, in accordance with the guiding principles of Section 22 of the *JBNQA*.

45. Alternatively, Respondent Ministers and Administrators have failed to take appropriate measures to apply paragraphs 22.2.4 and 22.3.34 of the *JBNQA* to forest management plans, permits, activities or operations and the CAAFs in the Territory.

Use of the forest and land by the Crees (Eenouch) and importance of the forest

46. Prior to, at the time and since the execution of the *JBNQA*, Applicants the James Bay Crees (Eenouch):

a) obtained their livelihood, subsisted and developed as a society and a people in and from Eenou Astchee, including the natural resources thereof, which comprise the forestry resources;

b) used and enjoyed the natural resources of Eenou Astchee and made use of its fruits and produce, including wood for shelter, for fuel, for canoes and for hunting and trapping equipment;

c) hunted, trapped and fished (harvested) throughout Eenou Astchee which activities depended upon maintenance of the forest and its habitat potential;

d) carried on, evolved and developed, according to their own values and priorities, their particular way of life in Eenou Astchee;

e) economically benefited from Eenou Astchee;

f) enjoyed an adequate land and resource base;

g) used the rivers and other waterbodies for their traditional activities, including transportation and sustenance;

h) generally used and shared and participated meaningfully and effectively in the use and management of Eenou Astchee and the natural resources thereof;

i) carried on and developed their spiritual and cultural practices in Eenou Astchee;

j) continuously enjoyed and exercised their unique concept of the land and their special relationship with the land;

k) managed and functioned in the Cree (Eenou) hunting territory system;

l) survived as a people on, and to a significant degree because of the land;

m) acted as protectors and stewards of the land and the environment and the animals; and

n) acted as conservation managers of the land and the animals,

47. The traditional lands of the James Bay Crees (Eeenouch) are described in paragraph 15 of the Declaration and include the Territory.

48. The Crees (Eenouch) allocate among themselves parcels of land as hunting territories under the responsibility of acknowledged leaders or Ndoho Ouchimauch. This Cree (Eenou) hunting territory system is a unique aboriginal land tenure system historically implemented and maintained by the Eenouch over all of Eenou Astchee. The Cree (Eenou) hunting territory system is also integral to the culture, way of life, livelihood, practices, customs and traditions of the James Bay Crees and is recognized by the James Bay and Northern Québec Agreement and related legislation.

49. The Territory is in fact divided into hunting territories actively used by the Crees (Eenouch) and most of these territories appear more fully from the map already produced as Exhibit P-1 with the Declaration and entitled "Forest Timber Supply & Management Agreements and James Bay Cree Traplines" by Robert Beaulieu, dated April 15, 1995. This hunting territory system is the original and prevailing "land use" plan of the territory contemplated by the *JBNQA*.

50. The forest is essential for the continuation of the Cree (Eenou) way of life. The health and maintenance of the forest are central to the viability of Cree (Eenou) use of Eenou Astchee and notably to the exercise of the activities described in paragraph 46 hereof. The forest is vital for the habitat, food and shelter of the wildlife resources on which Applicants depend.

51. The forest is also vital for the preservation of the cultural and economic traditions of the Crees (Eenouch) and has enabled Applicants and their ancestors to survive off the land in a unique way, to remain a particular hunting and gathering People and to maintain a special way of life and a distinct spiritual relationship with the land.

52. The forest that is the subject of these proceedings is a northern boreal forest with unique characteristics. It differs in many aspects from Québec's southern commercial forests. In comparison to those commercial stands, the northern boreal forest:

a) has soils that are thinner, colder and more fragile;

b) supports a limited number of tree species;

c) has a shorter growing season and more severe winter weather conditions including colder temperatures and greater snowfall;

d) takes a much longer period of time to regenerate a viable new forest following disturbances such as fire and logging;

e) has a slower rate of growth of all tree species which therefore take much longer to reach maturity;

f) has smaller tree height and diameter at all ages, including at maturity;

g) has a lower total volume of timber per hectare;

h) supports much more fragile terrestrial and watercourse ecosystems.

53. The northern boreal forest provides critically important habitat for many species of wildlife upon which the Applicants depend, including moose, caribou, bears, lynx, marten, otter, beaver, waterfowl and small game. The length and severity of the northern winter increase the importance of the sheltering capacity of the northern boreal forest and large areas of intact old growth forest are essential for the continued existence of marten, moose and woodlands caribou.

54. The forestry activities that are the subject of these proceedings are carried out without due regard for the Crees (Eenouch) who inhabit and use the northern boreal forest and without due regard for the unique ecological qualities of the northern boreal forest. No environmental impact assessment is undertaken prior to the approval of forest management plans or the commencement of logging and other activities.

55. The Respondent Minister of Natural Resources and the forest industry have collected incomplete and inadequate site specific social and ecological information where such information has been collected. Little or no consideration is given to the cumulative effects of numerous cut blocks or of the cumulative effects of forestry activities with other development and non-Native activity in the forest.

56. Generally, logging in Eenou Astchee is undertaken by clear cutting the forest which dramatically changes the forest landscape and has immediate and far reaching effects on the Crees (Eenouch), soils, water, riparian values and the habitat of wildlife resources upon which the Applicants depend.

57. In contrast to the methods employed by the Respondent Minister of Natural Resources and the forest industry, at a minimum state of the art forestry in northern boreal forests:

a) must be based on an ecosystem approach which requires gathering site specific social and ecological data and preparing all plans based on that data;

b) must place the principle of conservation of all forest resources at the forefront of all planning and decision making and must subject any timber harvesting to a lower priority than Cree (Eenou) use and conservation;

c) must ensure that sustainable development is a primary management goal and must apply sustainability to all forest values;

d) must assess forest development in light of its individual effect on the Eenou and on the environment and in light of its cumulative effects on Eenou society, Eenou use and on the environment in conjunction with all other resource exploitation.

Forestry operations and activities in the Territory

58. Since the execution of the *JBNQA*, there have been substantial forestry activities and operations in Eenou Astchee, a new forestry regime in 1987 based on CAAFs purporting to allocate significant portions of Eenou Astchee for commercial timber operations and extensive interference with and negative impacts upon the exercise by Applicants of their use of the land under the *JBNQA*, including their harvesting rights.

59. The forestry operations and activities in the Territory have included:

a) the construction of major access roads, pulp and paper mills and other forestry plants,

b) the construction of forestry camps,

c) the considerable use of heavy equipment,

d) significant work forces,

e) extensive clear-cutting, cutting and logging activities,

f) the removal of trees, vegetation and soil and the excessive disturbance, displacement and degradation of soil.

60. Such forestry operations and activities have created negative impacts:

a) on wildlife and wildlife habitat,

b) on harvesting of wildlife by the Crees (Eenouch),

c) on treaty harvesting rights of the Crees (Eenouch),

d) on Cree (Eenou) use of the land and resources,

e) on Cree society, the Cree communities, the Cree subsistence economy and Cree (Eenou) traditions, practices, customs and culture,

f) on the sustainable yield of the land for the Crees (Eenouch) enjoyed by them for centuries,

g) on the ecology of individual hunting territories and on the ecology of the Territory,

the whole as appears from the various reports, studies and documents, a copy of which are communicated to the Respondents as Exhibits **R-2** to **R-21**.

61. To date, wooded portions of the Cree (Eenou) hunting territories which are highly productive for wildlife have been removed by the forestry activities and operations of Defendant companies, as appears from a copy of a map entitled Forest Disturbance within Eeyou Astchee as of 1996 and proposed forestry activities for 1997-1999 communicated to the Respondents as Exhibit **R-22**, a copy of a map entitled *Forestry Road Network in Eeyou Estchee (Partial coverage)* dated October 1997 communicated to the Respondents as Exhibit **R-23** and a copy of a map untitled of forestry roads prepared by Robert Beaulieu and communicated to the Respondents as Exhibit **R-120**.

Additional continued and sustained cutting of this nature and at this rate:

a) will render such Cree (Eenou) hunting territories unusable for harvesting purposes,

b) will significantly jeopardize Cree (Eenou) use of the land,

c) will compromise Cree (Eenou) traditional activities and Cree (Eenou) rights,

d) will prejudice the existence of the Eenouch as a hunting and gathering society,

e) will impair their ability to earn a livelihood and practice their way of life, culture, values and traditions and

f) will impede the effective uses of the land by the Crees (Eenouch) described in paragraph 46 hereof.

As a minimum, such impacts must be properly assessed and no further forest management plans approved and no additional cutting permitted until final judgment herein or alternatively unless and until full environmental assessment and review has been carried out in accordance with the *JBNQA*, the *C.E.A. Act* and the *Environment Quality Act*.

Impact on matters of federal constitutional jurisdiction and responsibility

62. The forestry activities and operations to date and proposed forestry operations and activities and the attendant adverse social and environmental impacts in the Territory directly affect matters of federal authority, legislation, regulations and responsibility, including:

a) the harvesting activities of Applicants,

b) Indians and Indian lands (lands reserved for the Indians),

c) treaty rights, which are part of the federal common law (under reserve of aboriginal rights),

d) the trust or fiduciary obligations of the Attorney-General of Canada and Respondent federal ministers,

e) the habitat of fish and other wildlife,

f) fish in the rivers, streams and water-bodies,

g) the quality of waters frequented by fish,

h) migratory birds,

i) navigable waters,

j) accumulation of mercury in the environment, wildlife and human beings.

63. Failure by the Government of Canada and Respondent federal ministers to apply federal environmental and social impact assessment in regard to federal matters affected by forestry operations and activities constitutes a breach of the trust or fiduciary obligations owed by the Attorney General of Canada, as well as Respondent federal ministers, to Applicants. Respondent federal ministers are also obliged to take the measures required to carry out such assessment and to protect the rights, interests and activities of Applicants and their use of Eenou Astchee.

The *Forestry Act* Regime

64. At the time of the execution of the AIP and the *JBNQA*, the Québec forestry system was essentially based on forestry concessions ("concessions forestières") and timber limit licences and authorizations to cut timber in specific areas and contemplated basically areas south of the 50th parallel. Furthermore, no major forestry operations or activities were contemplated for the areas north of approximately the 50th parallel of latitude.

65. On or about April 1st, 1987, a new *Forest Act* (Bill 150, L.Q. 1986, ch. 108) purportedly came into force. That statute, now F-4.1, R.S.Q., *inter alia*, replaced the forestry concessions and annual allocation of commercial timber harvesting rights with a single mode of allocation, the Timber Supply and Forest Management Agreements (Contrats d'approvisionnement et d'aménagement forestier), also known as CAAFs.

66. The *Forest Act* provides for no special measures relating to Applicants, the *JBNQA* or Eenou Astchee (except for Category I lands as defined in the *JBNQA*), does not require that the rights and interests of Applicants be taken into account and breaches the *JBNQA* and the Aboriginal and treaty rights of Applicants. Applicants contest the constitutional applicability to them of the *Forest Act* and regulations thereunder and the allegations and conclusions herein are made under reserve of and without prejudice to that position.

67. Under the *Forest Act* and related regulations, the Minister of Natural Resources may enter into a CAAF with a qualified person, normally a forestry company, if forest production is sufficient and if he is of opinion that it is in the public interest. The CAAF is subject to a general forest management plan for the term of the CAAF to be prepared by a CAAF holder and approved by a forest engineer, specifying the forest management activities the CAAF holder intends to carry out. The plan is subject to the Minister's approval.

68. However, at the time of the signing of the various CAAFs pursuant to the new *Forest Act*, the first forest management plans were prepared by the Minister and included in the CAAFs as Appendix "C".

69. Under the *Forest Act* and related regulations, the term of a CAAF is nominally 25 years. However, the Act provides that the term of the CAAF extends for five more years if, during the preceding five years, the CAAF holder has fulfilled its "obligations" under the Act. The CAAF system under the *Forest Act* in fact purports to allocate forestry resources in perpetuity to the CAAF holder.

70. Under the *Forest Act* and related regulations, a general forest management plan is submitted to the Respondent Minister of Natural Resources for approval on April 1st of the

year preceding the year during which the duration of its CAAF may be extended, which is every five years.

71. Similarly, under the *Forest Act* and related regulations, every CAAF holder must prepare a five-year forest management plan and an annual forest management plan, which must be submitted to, and is subject to, the approval of the Respondent Minister of Natural Resources.

72. Under the *Forest Act* and related regulations, a five-year forest management plan is submitted to the Respondent Minister of Natural Resources for approval on December 1st of the year preceding the year during which the duration of its CAAF may be extended and the annual forest management plan must be submitted to the same Respondent Minister on December 1 of each year.

73. Under the *Forest Act*, Respondent the Minister of Natural Resources makes the general and the five-year forest management plan, but not the annual forest management plans, available for examination by the public for a period of 45 days prior to their approval. Such consultation is however subject to an application to be made in writing, giving reasons and stating the interest of the applicant in the forest to which the plan applies. The CAAF holder is only bound to "consult" the persons or groups who applied therefor in the first 20 days of the said 45 days period.

74. These general, five-year and annual forest management plans, when approved by the Minister, become part of the CAAFs.

75. Subject to his compliance with the *Forest Act* and the terms of his CAAF and upon approval of his annual forest management plan by the Minister, every CAAF holder is automatically entitled to obtain an annual forest management permit.

76. Under reserve of paragraph 80 hereof, none of the provisions of the *Forest Act* specifically requires the CAAF holders or the Respondent Minister of Natural Resources to take into account or consider the rights and interests of Applicants under the JBNQA, and in fact, none or little of the rights and interests of Applicants have been taken into account in the preparation or approval of the general forest management plans, the five-year forest management plans, the annual forest management plans or the permits.

77. All the CAAFs in the Territory, the general, the five-year and the annual forest management plans and permits prepared and approved under the *Forest Act* and related regulations constitute a significant change in land use affecting more than 25 square miles within the meaning of Schedule 1 of Section 22 of the *JBNQA* and are automatically

subject to environmental and social impact assessment under Section 22 of the *JBNQA*. A copy of the *Répertoire des bénéficiaires de CAAF*, dated March 31, 1999, is communicated to the Respondents as Exhibit **R-24**. A list of the alleged CAAFs issued in the Territory, of the holders of those CAAFs and of the hunting territories affected by those CAAFs is attached hereto as Annex 1. The areas covered by those CAAFs and the hunting territories affected by those CAAFs from approximately the 49° parallel of latitude are shown on the map entitled "Forest Timber Supply Management Agreements Extents and James Bay Cree Traplines" prepared by the Cree Regional Authority and dated August, 1998 and filed as Exhibit **R-25** hereof.

78. All forestry operations and activities pursuant to the CAAFs in the territory contemplated by the *JBNQA* and the general, five-year and annual forest management plans and permits constitute individually or cumulatively a significant change in land use affecting more than 25 square miles within the meaning of Schedule 1 of Section 22 of the *JBNQA* and are likewise subject to environmental and social impact assessment under Section 22 of the *JBNQA*. Moreover, various forestry operations and activities in Eenou Astchee involve works and activities, including access roads which individually or cumulatively constitute a significant change in land use and affect more than 25 square miles of land.

79. Schedule B of the *Environment Quality Act* provides at paragraph h) that all forestry development, when included in plans provided for in the *Forest Act*, are automatically exempt from the assessment and review procedure. No such amendment to the JBNQA or to the *Environment Quality Act* was consented to by the Crees. This provision constitutes a violation of the Agreement-in-Principle and of the JBNQA. Paragraph h) of Schedule B of the *Environment Quality Act* is illegal, constitutionally inapplicable and unopposable to Applicants, inoperative in Eenou Astchee and inconsistent with the *JBNQA* and an illegal attempt to limit impact assessment under the *JBNQA*. Furthermore, the *JBNQA* and federal and provincial legislation approving the *JBNQA* prevail over the *Environment Quality Act* to the extent of any inconsistency.

80. The provisions of the *Forest Act* are incompatible with the provisions of the *JBNQA* and more particularly with Sections 5, 22 and 24 of the *JBNQA*, and the rights of Applicants under the *JBNQA* and federal and provincial legislation approving the *JBNQA* prevail to the extent of the inconsistency.

<u>The issuance of new general, five-year and annual forest management plans</u>

81. The CAAF system established under the *Forest Act* contemplates at this time the preparation and approval of new general, five-year and annual forest management plans

which will inevitably, significantly, critically and negatively affect harvesting activities of Applicants, the trapline system of Applicants, Cree (Eenou) use of, and Cree (Eenou) rights in, Eenou Astchee and particularly Applicants' rights under the *JBNQA*, and the existing state of the wildlife, forest resources and environment of Eenou Astchee.

82. These new general, five-year and annual plans are all part of the CAAFs and represent new or amended contracts regarding resources in Eenou Astchee affecting the treaty (and aboriginal) rights of Applicants. Such plans represent a major change to the status quo and will inevitably have an important impact on the determination of the extent, type, manner and speed of timber cutting and forestry operations and activities in Eenou Astchee and on the rights and activities of Applicants as well as on the existing state of the wildlife, resources and environment of Eenou Astchee.

83. Pursuant to the *Regulation respecting forest management plans and report*, R.S.Q., c. F-4.1 r. 1.02, the general forest management plans applying to the administrative region 08 within Eenou Astchee were scheduled to be submitted to Respondent the Minister of Natural Resources on April 1st, 1998.

84. The following are the Defendant forestry companies, alleged holders of CAAFs within that part of administrative region 08 situated in the Territory, which were scheduled to submit their general forest management plans on April 1st, 1998, being

- Les Industries Norbord Inc. (common areas 82-85B, 82-85C, 83-87N, 84-20, 85-20, 86-01, 86-03S, 86-10, 86-20, 86-21, 86-22, 86-23, 86-24, 87-04, 87-20);
- Domtar Inc. (common areas 83-87N, 86-20);
- Scierie Amos Inc. (common areas 83-87N, 84-20, 86-10, 86-20, 86-21, 86-24, 87-04, 87-20);
- Scierie Gallichan Inc. (common areas 83-87N, 86-01, 86-10, 86-20, 86-21, 86-24, 87-20);
- IPB International Inc. (common areas 83-87N, 84-20, 85-20, 86-01, 86-03S, 86-23, 86-24, 87-04, 87-20);
- Tembec (common areas 82-85B, 85-20, 86-01, 86-10);
- Scierie Landrienne (common areas 86-01, 86-03S, 86-03N, 86-10, 87-04, 87-20);
- Matériaux Blanchet Inc. (common areas 86-01, 86-10, 86-22, 86- 23);
- Produits forestiers Donohue (common areas 84-20, 86-21, 87-20);
- Scierie Senco (common areas 84-20, 86-01, 86-23, 87-04);
- Optibois (common are 87-04).

85. However, submission of those general forest management plans was postponed to April 1st, 1999 and such plans have still not been submitted, as far as Applicants are aware.

86. The general forest management plans scheduled to be submitted by the forestry companies listed in paragraph 84 above cover or affect the Cree (Eenou) hunting territories or traplines enumerated in the list attached to these proceedings as Annex 1.

87. Pursuant to the *Forest Act* and related regulations, the general forest management plans applying to that part of administrative region 02 within the Territory were scheduled to be submitted to Respondent the Minister of Natural Resources on April 1st, 1999 but such plans still have not been submitted, as far as Applicants are aware, and have also been postponed to an unknown date.

88. In practice, the general forest management plans and five-year management plans for administrative region 02 are contemplated to be submitted to Respondent the Minister of Natural Resources the year after the submission of the same plans for administrative region 08.

89. The following are the forestry companies present in the Territory which are alleged holders of CAAFs within administrative region 02:

- Produits forestiers Donohue Inc. (common area 25-03);
- Abitibi-Consolidated Inc. (common area 26-04);
- Barrette-Chapais Lté (common areas 26-04 and 26-20);
- Les Chantiers de Chibougamau Ltée (common area 26-05);
- Bois KMS (GMI) Ltée (common area 26-20);
- Fournitures minières Simard Inc. (common area 26-20);
- Produits Forestiers Alliance Inc. (common areas 25-02 and 25-03);
- Panneaux Chambord Inc. (common areas 25-02, 25-03 and 26-04);
- Kruger Inc. (common area 26-05).

90. The general forest management plans to be eventually submitted by the forestry companies listed in paragraph 89 above cover or affect the Cree (Eenou) hunting territories or traplines enumerated in the list attached to these proceedings as Annex 1.

91. General forest management plans and five-year management plans for administrative region 04 are also scheduled to be submitted for approval by Respondent the Minister of Natural Resources in the near future.

The following are the Defendant forestry companies which are alleged holders of CAAFs in that part of the Territory within administrative region 04:

- Panneaux Chambord Inc. (common area 42-01);
- Produits forestiers Donohue (common area 42-01)

92. The approval by Respondent Minister of Natural Resources of general, five-year and annual forest management plans and the plans themselves as well as the CAAFs as modified by such plans will inevitably constitute a new and significant change in land use individually or cumulatively affecting more than 25 square miles within the meaning of Schedule 1 of Section 22 of the *JBNQA* with the negative impacts described in paragraphs 81 and 82 hereof.

93. The proposed operations and activities of the forestry companies listed in paragraphs 84, 89 and 91 hereof pursuant to new general, five-year and annual forest management plans and the annual permits will constitute a new and significant change in land use individually or cumulatively affecting more than 25 square miles within the meaning of Schedule 1 of Section 22 of the *JBNQA* with the negative impacts described in paragraphs 81 and 82 hereof.

94. The CAAFs so revised, the new general forest management plans, the new five-year forest management plans and the annual forest management plans and permits related thereto and proposed forestry operations and activities pursuant thereto all constitute projects, development or development projects within the meaning of Section 22 of the *JBNQA* which all involve federal and provincial jurisdiction within the meaning of Section 22 of the *JBNQA* and are all subject to environmental and social impact assessment and review pursuant to Section 22 of the *JBNQA*.

95. Morever, subject to the constitutional inapplicability of the *Forest Act* and regulations, Respondent Minister of Natural Resources has allowed Defendant forestry companies mentioned in paragraphs 84, 89 and 91 herein to operate contrary to the *Forest Act* and regulations.

Duties and Obligations of the Respondents

96. Respondents all have constitutional, statutory, public and trust duties to carry out or have carried out environmental and social impact assessment and review of the general and five-year management plans to be filed shortly, the revised CAAFs, the annual plans and permits, and all proposed forestry operations and activities in the Territory, and it is crucial that Respondents be compelled to exercise such duties and obligations.

97. Respondent Minister of Natural Resources has constitutional, statutory, public, treaty and trust duties to ensure that no general and five-year forest management plans and no annual forest management plans are approved, and no permits issued, and no forestry operations or activities pursuant thereto are allowed to be carried out, unless and until environmental and social impact assessment and review has been completed, unless and until such plans, permits and forestry operations and activities pursuant thereto are authorized in accordance with Section 22 of the *JBNQA* and unless and until Applicants' rights, use of the land and values, activities, culture, customs, practices and traditions have been respected.

98. Since the execution of the *JBNQA* in 1975, Applicants have consistently, both through the various entities established pursuant to the *JBNQA* and directly, made representations to Respondents concerning Applicants' treaty rights in regard to environmental and social impact assessment of forestry activities and operations and the failure of Respondents to respect and implement this aspect of the *JBNQA*. This has been communicated by Applicants to Respondents in letters, reports, briefs, as well as verbally in meetings and through Cree participation in the various entities established by the *JBNQA*. Respondents have repeatedly acknowledged the serious issues raised by Applicants, as well as Respondents' responsibility to protect and respect Applicants' rights, but have failed to protect, respect and enforce Applicants' rights, as illustrated by various letters, reports and briefs, copies of which are communicated to the Respondents as Exhibits **R-26** to **R-117**.

99. Notwithstanding Applicants' representations referred to in the preceding paragraph, Respondents have failed to take any significant measures to apply the *JBNQA* to forest management plans, permits, operations and activities in the Territory and have failed to apply the stated purposes of the environmental and social protection regime under Section 22 of the *JBNQA* and the guiding principles prescribed by that Section while forestry operations have increased both in regard to the extent of territory negatively affected and the rate at which the territory is negatively affected.

100. Despite the severe impacts upon and damages to the Applicants, their rights and activities and to the Territory, no forest management plans and no CAAFs, permits, operations and activities in the Territory have been subjected to the required environmental and social impact assessment and review under the *JBNQA*, the *C.E.A Act* and the *Environment Quality Act*.

101. Applicants throughout the years, and more particularly since 1995, have attempted, in good faith but to no avail, to seek without prejudice compromises with the Attorney General of Québec and the Attorney General of Canada regarding the coexistence of

forestry operations and activities and the meaningful exercise of and respect for Cree (Eenou) rights and interests.

102. In recent months, Respondent Minister Chevrette, despite the willingness of Cree Applicants to continue efforts to seek without prejudice compromises, has refused to implement the *JBNQA* and related legislation in regard to forestry, has refused to recognize Cree (Eenou) rights, has arbitrarily denied the rights and guarantees of the Crees (Eenouch), and has attempted to deny Applicants access to and redress from the Courts, as appears from a copy of letters between Minister Chevrette and Matthew Coon Come which are communicated to the Respondents as Exhibits **R-118** and **R-119**.

103. Applicants have used all due diligence in the circumstances, have expeditiously sought resolution of the issues in controversy in these proceedings and have exhausted all possible alternative extrajudicial remedies. However, the effective exercise by Applicants of their rights over a large part of the Territory is imperilled and at a critical juncture.

104. Despite the representations of the Applicants referred to in paragraphs 98, 99 and 101 hereof, new general forest management plans are likely to be submitted by the forestry companies in an immediate future.

105. The approval of these new general forest management plans by the Respondent Minister of Natural Resources will allow the forestry companies to establish within the Territory for the next twenty five years:

a) new areas of cutting within various management units,

b) new annual volumes of cutting,

c) new forest management activities.

106. Applicants are now at a point where there is no other legal or equitable remedy equally convenient, beneficial and effectual which can save Applicants from suffering continued great, serious and irreparable loss, injury and damage and protect Applicants' rights than an interlocutory injunction.

<u>The prejudice and balance of convenience</u>

107. As a result of Respondents' various breaches and illegal actions and omissions in relation to forestry as described in the present motion, Applicants have suffered and continue to sustain extensive prejudice, as described herein.

108. The extent, planning, type, manner and speed of timber cutting purportedly authorized by Respondent Minister of Natural Resources and the forestry operations and activities of the forestry companies described herein have now reached a point where they threaten and compromise Eenou Astchee, Cree (Eenou) use of the land and natural resources, Cree (Eenou) harvesting activities, Cree (Eenou) customs, traditions and practices and Cree (Eenou) subsistence activities, jeopardize the right of the Crees (Eenouch) to their way of life, prejudice significantly the Tallymen, whose hunting territories are systematically being destroyed as well as the children of such Tallymen, impair and reduce the rights of Applicants under the *JBNQA* (as well as the aboriginal rights of Applicants), threaten the existence of the Eenou as a hunting and gathering society, the wildlife resources on which the Eenou depend and the boreal forest and environment of Eenou Astchee.

109. Applicants have also been caused serious harm by Respondents directly arising from the failure of Respondents to carry out the environmental and social impact assessment process prescribed by Section 22 of the *JBNQA* and of the *Environment Quality Act* and the *C.E.A. Act*, the failure to respect the constitutionalized treaty rights of Applicants under the *JBNQA* and the failure of Respondents to discharge their trust or fiduciary obligations and statutory duties to Applicants in that, inter alia,

a) numerous Cree (Eenou) hunting territories or traplines have been excessively damaged and disrupted rendering them less and less suitable for the subsistence living and rendering more and more difficult the transmission and the exercise of the Cree (Eenou) traditional way of life;

b) the wildlife habitat, the cover for moose and other animals and the fish habitat have been severely disrupted by forestry activities and operations;

c) the construction of forest roads which afford greater accessibility to the sport hunters and sport fishers has seriously affected the fish and wildlife population and more particularly the moose population;

d) the logging activities have entailed severe disruption of the social and economic base of the Crees' (Eenouch) communal harvesting practices and the values, spiritual and cultural practices of the Eenouch as well as their special relationship to the land and

e) the carrying capacity of the land for Eenou use, including traditional activities, has been greatly diminished.

110. Without the intervention of this Court, and without the granting of an interlocutory injunction, serious harm will continue and irreparable injury will be caused to Applicants. Furthermore, without such interlocutory relief, a factual, legal and irreversible situation of such a nature will be created as to render the final judgement ineffectual, in that, in addition to the negative impacts described elsewhere herein:

a) Defendant forestry companies will continue their activities and operations in the Territory without any proper social and environmental impact assessment of their operations and activities,

b) Defendant forestry companies will continue to clear certain specific Cree (Eenou) hunting territories of their productive forest habitat, rendering them unsuitable for subsistence living;

c) the increased logging means a continuation and escalation of the impacts which have been experienced as a result of past logging operations and activities, including the following impacts:

i. severe disruption of additional large portions of hunting territories and traplines;

ii. severe interference with and disruption of Cree (Eenou) use of the land, Cree (Eenou) society and Cree (Eenou) traditions, practices, customs, culture and values described in paragraph 46 herein;

iii. excessive habitat degradation caused by logging, particularly clear-cutting, extensive destruction of animal habitat and the destruction of fish habitat;

iv. reduction and disruption of wildlife population caused by the construction, operation and maintenance of logging roads.

d) new authorizations to cut timber and manage the forest in Eenou Astchee will be bestowed upon third parties without the consent of Applicants and to the detriment of Cree (Eenou) rights under the *JBNQA* (as well as Cree (Eenou) aboriginal rights);

e) general, five-year and annual forest management plans will be approved and annual permits will be issued under the *Forest Act* without consideration and without respect for the rights and interests of Applicants under the *JBNQA*.

111. Without an interlocutory injunction, a situation will be created such that the Cree (Eenou) Nation and Applicants will be effectively denied and deprived of the exercise of Cree (Eenou) hunting, fishing and trapping rights and use of Eenou Astchee in accordance with the provisions, objectives and intention of the *JBNQA*.

112. Unless an interlocutory order of injunction is issued against Respondents ordering them to comply with and apply federal and provincial environmental and social impact assessment and review procedures contemplated by the *JBNQA*, the *C.E.A. Act* and the *Environment Quality Act* to CAAFs, forest management plans, permits, operations and activities, there will be no environmental and social impact assessment in respect to the cumulative or even additional impact of the forestry operations and activities of Defendant forestry companies in the Territory in breach of the principles, spirit, intent and text of the *JBNQA* and the treaty rights of Applicants while permanently and critically transforming negatively the environment, ecology and wildlife resources of Eenou Atschee.

113. The past, present and contemplated operations and activities by Defendant forestry companies and the refusal of the Respondents to apply environmental and social impact assessment to the forestry operations and activities in the Territory will create a situation of such a nature as to render the final judgement ineffectual.

114. It is of great urgency and of great importance to the Crees (Eenouch) and in the public interest that the forestry operations and activities of Defendant forestry companies in Eenou Astchee be subject to federal and provincial environmental and social assessment and review pursuant to the *JBNQA*, the *Environment Quality Act* and the *CEA Act*.

115. In a public consultation document, Respondent Minister acknowledges several deficiencies, including the lack of enforcement of the *Forest Act* and regulations, the lack of effective controls and monitory procedures, inadequate penalties, problems with sustainable yield, the many modifications to forest plans and the inferior quality thereof, the failure to take into consideration the values, needs and activities of Native People in regard to development choices, while completely omitting to mention the *JBNQA* and treaty rights of the Applicants, and the lack of sufficient data to enable suitable management of the forest, among other things, as can be ascertained in greater detail from a copy of the document which is communicated to the parties as Exhibit **R-64**.

116. Moreover, in that document, it is admitted that the Department of Forests cannot assess the actual volume of timber cut and the actual volume of timber utilized nor whether the principle of sustainable yield is being respected. Nonetheless, Respondent Minister of Natural Resources also announces his intention to extend access to forestry lands and

increase harvesting of resources by non-natives and thereby further jeopardize Cree (Eenou) rights and Cree (Eenou) use of Eenou Astchee.

117. Should an interlocutory injunction be granted, Respondents will suffer no irreparable harm or injury. The implementation of environmental and social impact assessment provided for in a constitutionalized treaty as well as in federal and provincial statutes is a discharge of legal obligations, not irreparable harm or injury.

118. In all the circumstances, the balance of convenience greatly and overwhelmingly favours Applicants.

WHEREFORE, APPLICANTS PRAY THIS HONOURABLE COURT TO:

A. Issue an interlocutory order of injunction enjoining the Respondent Minister of Natural Resources of Québec not to approve nor authorize pursuant to the *Forest Act* general forest management plans and five-year forest management plans in relation to the CAAFs listed in paragraphs 84, 89 and 91 hereof and which are included in Annex 1 hereof:

1) until a final judgment has been rendered in these proceedings, or alternatively

2) unless and until such plans have undergone full federal and provincial environmental and social impact assessment review by the Evaluating Committee, the Review Committee, the Review Panel and Respondent Federal and Provincial Administrators pursuant to Section 22 of the *JBNQA* and pursuant to Part II of the *Environment Quality Act* and under the *CEA Act* and have received the requisite approvals under the *JBNQA* and those statutes.

B. Issue an interlocutory order of injunction enjoining the Respondent Minister of Natural Resources of Québec not to approve nor authorize any annual forest management plan pursuant to the *Forest Act* and not to issue any annual forest management permit pursuant to the Forest Act in relation to the CAAFs listed in paragraphs 84, 89 and 91 hereof and which are included in Annex 1 hereof:

1) until a final judgment has been rendered in these proceedings, or alternatively,

2) unless and until the general forest management plans, the five-year forest management plans and the annual forest management plans and the permits related to these CAAFs have undergone full federal and provincial environmental and social impact assessment reviews by the Evaluating Committee, the Review Committee, the Review Panel and the Federal and Provincial Administrators pursuant to Section 22 of the *JBNQA* and pursuant to Part II of the *Environment Quality Act* and under the *CEA Act* and have received the requisite approvals under the *JBNQA* and those statutes.

C. Issue an interlocutory order of injunction enjoining Respondent the Provincial Administrator and Respondent the Federal Administrator under Section 22 of the *JBNQA* to treat the general forest management plans, five-year forest management plans and the annual forest management plans and permits relating to the CAAFs listed in paragraphs 84, 89 and 91 hereof and which are included in Annex 1 of this Motion as subject to Schedule I of Section 22 of the *JBNQA* and to the full environmental and social impact assessment review by the Evaluating Committee, the Review Committee, the Review Panel and the Administrators themselves pursuant to Section 22 of the *JBNQA* and to take the measures required to have such review carried out.

D. Issue an interlocutory order of injunction enjoining Respondent the Minister of the Environment of Québec to treat the general forest management plans, the five-year forest management plans and the annual forest management plans relating to the CAAFs listed in paragraphs 84, 89 and 91 hereof and which are included in Annex 1 of this Motion as subject to Schedule A of the *Environment Quality Act* and to the full environmental and social impact assessment review by the Evaluating Committee and the Review Committee pursuant to Part II of the *Environment Quality Act* and to take the measures required to have such review carried out.

E. Issue an interlocutory order of injunction enjoining Respondent the Minister of Environment of Canada to assess the plans described in Conclusion C pursuant to the *CEA Act* and to take the measures required to have such review carried out.

F. Issue an interlocutory order of injunction enjoining Respondent Minister of Natural Resources of Québec not to enter into, approve or authorize any new CAAFs in the territory contemplated by the *JBNQA* until a final judgment has been rendered in the present legal proceedings.

G. Issue an interlocutory order of injunction enjoining Respondent Minister of Natural Resources not to approve any general forest management plan, five-year forest management plan or annual forest management plan or permit in Eenou Astchee unless and until such plans respect and take into account Cree (Eenou) use of the land, Cree (Eenou) harvesting activities and Cree (Eenou) rights, implement the principle of truly sustainable yield and implement trust or fiduciary obligations to Applicants.

H. i) Subsidiarily, issue interlocutory orders of injunction enjoining Respondent Minister of Natural Resources not to approve any revision to the CAAFs mentioned in paragraphs 84, 89 and 91 hereof and which are included in Annex 1, any general, five-year and annual forest management plans and any proposed forestry operations and activities pursuant thereto unless and until:

a) they have undergone full environmental and social impact screening and assessment by the JBACE,

b) there has been full consideration of the comments of the JBACE,

c) the Government of Québec or subsidiarily, Respondent Minister of Natural Resources, has applied to such plans and

proposed forestry operations and activities pursuant thereto the guiding principles in Section 22 of the JBNQA, including due consideration of the harvesting activities, land use and rights of the Crees and

d) such plans have thereafter been approved by the Government of Québec or subsidiarily by the Respondent Minister of Natural Resources.

ii) In the alternative described in Conclusion G(i) hereof, issue interlocutory orders of injunction against Respondent the Québec Minister of the Environment and Respondent Minister of Natural Resources ordering them to take the measures required to provide the JBACE with appropriate financial, human and other resources to enable the JBACE to carry out the assessments and reviews and provide the comments contemplated by Section 22 of the JBNQA.

I) Issue interlocutory orders of injunction against Respondent Ministers Jane Stewart, Christine Stewart, Paul Bégin and Guy Chevrette ordering them to fully discharge the trust or fiduciary obligations to Applicants to ensure that any forestry operations, activities and related activities in Eenou Astchee are made subject to and compatible with Applicants' rights, interests and uses of the land, including harvesting activities and Cree practices, customs and traditions.

J) If any approval of the general forest management plans, the five-year forest management plans and the annual forest management plans is granted pursuant to the *Forest Act* in relation to the CAAFs listed in paragraphs 84, 89 and 91 hereof and which are included in Annex hereof subsequent to the institution of these proceedings, issue an interlocutory order of injunction suspending the effect of such approval:

1) until a final judgment has been rendered in these proceedings, or alternatively,

2) unless and until such plans have undergone full federal and provincial environmental and social impact assessment review by the Evaluating Committee and the Review Committee, the Review Panel and the Federal and Provincial Administrators pursuant to Section 22 of the *JBNQA* and pursuant to Part II of the *Environment Quality Act* and under the *CEA Act* and have received the requisite approval under the *JBNQA* and those statutes, and

3) unless and until such plans respect and take into account Cree (Eenou) use of the land, Cree (Eenou) harvesting activities and Cree (Eenou) rights, implement the principle of truly sustainable yield and implement trust or fiduciary obligations to Applicants.

THE WHOLE WITH COSTS.

Montréal, the 6th day of July, 1999

(S) O'REILLY MAINVILLE & ASSOCIÉS
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Attorneys for Plaintiffs-Applicants

Counsel: Hutchins, Soroka & Dionne

TRUE COPY

O'Reilly Mainville & Associés
Attorneys for Plaintiffs-Applicants

ANNEX 1

CAAFS

COMMON AREA		COMPANY NAME AND MANAGEMENT UNIT NUMBER	AFFECTED TRAPLINES (when applicable)
A) ADMINISTRATIVE REGION 02			
025-02	226	Industrie Manufacturières Mégantic Inc.	
	191	Panneaux Chambord Inc.	
	220	Produits Forestiers Alliance Inc. (Division Mistassini)	
	209	Produits Forestiers Alliance Inc. (St-Félicien)	
	210	Produits Forestiers Alliance-Girardville Inc.	
	204	Scierie Thomas-Louis Tremblay Inc.	
	022	Stella-Jones Inc.	
025-03	353	9004-9206 Québec Inc. (Transec Inc.)	M-37
	226	Industries Manufacturières Mégantic Inc.	M-42
	324	M.C.T. Forestier Inc.	M-42B
	195	Panneaux Chambord Inc. (Division sciage)	M-43
	191	Panneaux Chambord Inc.	M-44
	209	Produits Forestiers Alliance Inc. (St-Félicien)	M-46A
	210	Produits Forestiers Alliance-Girardville Inc.	M-46B
	205	Produits Forestiers Donohue Inc. - Chibougamau	M-51A O-59
	206	Produits Forestiers Donohue Inc. - Girardville	O-60
	207	Produits Forestiers Donohue Inc. - La Doré	O-62
	208	Produits Forestiers Donohue Inc. - St-Thomas	
	212	Scierie Raymond Poirier Inc.	
	204	Scierie Thomas-Louis Tremblay	
	022	Stella-Jones Inc.	

026-04	189	Abitibi-Consolidated Inc. (Division Roberval)	O-57 O-58 O-59 O-60 O-61	O-62
	215	Barrette-Chapais Ltée		
	191	Panneaux Chambord Inc.		
026-05	249	Kruger Inc. (Division Trois-Rivières)	M-30 M-31 M-36 M-37 M-38	M-47A M-48 M-49 M-50 M-51
	217	Les Chantiers de Chibougamau Ltée	M-39 M-39A M-40 M-42 M-42A M-42B M-43	M-51A M-51B M-58 O-55 O-56 O-57 O-58
	354	Les Entreprises Bertrand Tremblay de Chibougamau Inc.	M-44 M-45A M-46 M-46A M-46B	O-59 W-5D W-10 W-10A
026-06	345	Produits Forestiers Nabakatuk Inc.	W-10A W-12 W-22 W-16 W-21A	W-15 W-21 O-53 W-11A W-11
026-020	215	Barrette-Chapais Ltée	M-4 M-35A M-39 M-39A M-40	O-60 O-61 O-62 W-10A W-12
	023	Bois KMS (GMI) Ltée	M-41 M-45 M-47A M-48	W-16 W-21 W-21A W-21B
	327	Fournitures Minières Simard Inc.	M-49 O-48A O-48B O-52	W-22 W-23 W-23A W-23B
	366	Société en Commandite Scierie Opitciwan	O-53 O-54 O-55 O-58	W-25 W-25B W-26 W-27
B) ADMINISTRATIVE REGION 04				
042-01	263	Cartons St-Laurent Inc. (La Tuque)	O-62	
	349	Gérard Crête & Fils Inc. (Division La Tuque)	O-61	

	265	Industries John Lewis Ltée	
	226	Industries Manufacturières Mégantic Inc.	
	195	Panneaux Chambord Inc. (Division sciage)	
	191	Panneaux Chambord Inc.	
	194	Produits Forestiers Donohue Inc. - St-Prime	
	329	Produits Forestiers La Tuque Inc.	
	192	Scierie P.H. Lemay & Fils Ltée	
	366	Société en Commandite Scierie Opitciwan	
	022	Stella-Jones Inc.	
C) ADMINISTRATIVE REGION 08			
082-85B	053	Industries Norbord Inc. (Div. La Sarre, panneaux agglomérés)	
	038	Industries Norbord Inc. (Division bois d'oeuvre, La Sarre)	
	024	IPB International Inc.	
082-85C	053	Industries Norbord Inc. (Div. La Sarre, panneaux agglomérés)	A-3 O-58 A-4 O-59 N-8 O-60 N-10 O-61 O-57 O-62
	038	Industries Norbord Inc. (Division bois d'oeuvre, La Sarre)	
083-87N	364	Coopérative de Travail de Guyenne	W-14 W-24C
	049	Domtar Inc. (Groupe des pâtes et papiers) (Division du bois de sciage)	W-19 W-24D
	053	Industries Norbord Inc. (Div. La Sarre, panneaux agglomérés)	W-21 W-25
	024	IPB International Inc.	W-21B W-25A W-21C W-25B W-24 W-24A W-24B
	047	Scierie Amos Inc.	
084-20	053	Industries Norbord Inc. (Div. La Sarre, panneaux agglomérés)	
	054	Industries Norbord Inc. (Div. Val-d'Or, panneaux gaufrés)	
	024	IPB International Inc.	
	045	Produits Forestiers Donohue Inc. - Champneuf	
	048	Produits Forestiers Donohue Inc. - Comtois	
	034	Produits Forestiers Donohue Inc. - Senneterre	
	047	Scierie Amos Inc.	
	339	Scierie Senco Ltée	

085-20	364	Coopérative de Travail de Guyenne	A-4 N-8
	053	Industries Norbord Inc. (Div. La Sarre, panneaux agglomérés)	
	024	IPB International Inc.	
	036	Tembec Inc. (Div. Abitibi, La Sarre)	
	037	Tembec Inc. (Div. Abitibi, Taschereau)	
086-01	364	Coopérative de Travail de Guyenne	
	053	Industries Norbord Inc. (Div. La Sarre, panneaux agglomérés)	
	054	Industries Norbord Inc. (Div. Val-d'Or, panneaux gaufrés)	
	024	IPB International Inc.	
	046	Matériaux Blanchet Inc. (Division Amos)	
	039	Scierie Gallichan Inc.	
	042	Scierie Landrienne Inc.	
	339	Scierie Senco Ltée	
	037	Tembec Inc. (Div. Abitibi, Taschereau)	
086-03N	42	Scierie Landrienne Inc.	N-8 W-5D N-20 W-8 W-3 W-9 W-4A W-53
086-03S	054	Industries Norbord Inc. (Div. Val-d'Or, panneaux gaufrés)	
	024	IPB International Inc.	
	042	Scierie Landrienne Inc.	
086-10	053	Industries Norbord Inc. (Div. La Sarre, panneaux agglomérés)	W-1 W-7 W-2 W-8
	046	Matériaux Blanchet Inc. (Division Amos)	W-3 W-17 W-4 W-17A
	039	Scierie Gallichan Inc.	W-5D N-19 W-5C N-20
	042	Scierie Landrienne Inc.	W-6 W-53
	037	Tembec Inc. (Div. Abitibi, Taschereau)	W-6A
086-20	041	Domtar Inc. (Scierie Matagami)	N-5 W-5C N-7 W-5D N-8 W-7 N-18 W-9 N-19 W-10

	053	Industries Norbord Inc. (Div. La Sarre, panneaux agglomérés)	N-20 N-21 N-22 N-23	W-10A W-11 W-13 W-13A
	047	Scierie Amos Inc.	W-1 W-3 W-4 W-4A	W-17 W-17A W-53
086-21	053	Industries Norbord Inc. (Div. La Sarre, panneaux agglomérés)	M-38 N-8	W-5 W-5A
	045	Produits Forestiers Donohue Inc. - Champneuf	N-19	W-5B
	048	Produits Forestiers Donohue Inc. - Comtois	N-20	W-5C
	047	Scierie Amos Inc.	N-22 N-24 W-4	W-5D W-6A W-53
086-22	053	Industries Norbord Inc. (Div. La Sarre, panneaux agglomérés)	W-1 W-2 W-3	W-6A W-9 W-11
	046	Matériaux Blanchet Inc. (Division Amos)	W-4 W-5C W-6	W-17 W-17A W-8
086-23	364	Coopérative de Travail de Guyenne		
	054	Industries Norbord Inc. (Div. Val-d'Or, panneaux gaufrés)		
	024	IPB International Inc.		
	046	Matériaux Blanchet Inc. (Division Amos)		
	339	Scierie Senco Ltée		
086-24	053	Industries Norbord Inc. (Div. La Sarre, panneaux agglomérés)	W-3 W-4	
	054	Industries Norbord Inc. (Div. Val-d'Or, panneaux gaufrés)	W-7 W-24A	
	024	IPB International Inc.		
	047	Scierie Amos Inc.		
	039	Scierie Gallichan Inc.		
087-04	053	Industries Norbord Inc. (Div. La Sarre, panneaux agglomérés)	W-2 W-11A	W-21 W-21A
	035	Industries Norbord Inc. (Division Senneterre)	W-11B W-15	W-24A
	024	IPB International Inc.	W-16	
	342	Optibois Inc.	W-18	
	047	Scierie Amos Inc.	W-19	
	339	Scierie Senco Ltée	W-20	

087-20	364	Coopérative de Travail de Guyenne	W-1	W-13B
	053	Industries Norbord Inc. (Div. La Sarre, panneaux agglomérés)	W-2 W-10A	W-14 W-15
	054	Industries Norbord Inc. (Div. Val-d'Or, panneaux gaufrés)	W-11 W-11A	W-17A W-18
	024	IPB International Inc.	W-11B	W-19
	045	Produits Forestiers Donohue Inc. - Champneuf	W-12	W-20
	048	Produits Forestiers Donohue Inc. - Comtois	W-13	
	047	Scierie Amos Inc.	W-13A	

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
No. 500-05-043203-981

S U P E R I O R C O U R T

MARIO LORD,
-and-
CHIEF JOHN KITCHEN, suing personally and, in conjunction with Applicant Grand Chief Matthew Coon Come, on behalf of and as a representative of the Cree Nation of Waswanipi,
-and -
CHIEF GEORGE WAPACHEE, suing personally and, in conjunction with Applicant Grand Chief Matthew Coon Come, on behalf of and as a representative of the Nemaska First Nation,
-and-
CHIEF-DR. BILLY DIAMOND, suing personally and, in conjunction with Applicant Grand Chief Matthew Coon Come, on behalf of and as a representative of the Waskaganish First Nation,
-and-
FORMER CHIEF WILLIAM MIANSCUM, suing personally and, in conjunction with Grand Chief Matthew Coon Come, on behalf of and as a representative of certain Ndoho Ouchimauch and Ndoho Eenouch of Mistissini,
-and-
CHIEF KENNY LOON, suing personally and, in conjunction with Applicant Grand Chief Matthew Coon Come, on behalf of and as a representative of the other members of the Cree Nation of Mistissini,
-and-
CHIEF ABEL BOSUM, suing personally and, in conjunction with Applicant Grand Chief Matthew Coon Come, on behalf of and as a representative of the Oujé-Bougoumou Cree Nation,
- and-
GRAND CHIEF MATTHEW COON COME, suing personally and on behalf of the Cree Nation (James Bay Crees),
-and-
VIOLET PACHANOS,
-and-
THE CREE NATION OF WASWANIPI (BAND),
-and-
THE NEMASKA FIRST NATION (BAND),
-and -
THE WASKAGANISH FIRST NATION, (BAND)
- and-
THE CREE NATION OF MISTISSINI (BAND),
-and-
THE OUJÉ-BOUGOUMOU CREE NATION,
-and-
THE GRAND COUNCIL OF THE CREES (EEYOU ISTCHEE) (GRAND COUNCIL OF THE CREES (OF QUEBEC)),

-and-
THE CREE REGIONAL AUTHORITY,
-and-
CREE TRAPPERS' ASSOCIATION,
-and-
EDWARD GILPIN,

Plaintiffs-**APPLICANTS**

-VS-

THE ATTORNEY-GENERAL OF QUÉBEC,
-and -
THE ATTORNEY-GENERAL OF CANADA,
-and -
THE PROVINCIAL ADMINISTRATOR UNDER SECTION 22 OF THE *JAMES BAY AND NORTHERN QUEBEC AGREEMENT*,
-and-
THE FEDERAL ADMINISTRATOR UNDER SECTION 22 OF THE *JAMES BAY AND NORTHERN QUEBEC AGREEMENT*,
-and-
THE HONOURABLE PAUL BÉGIN,
-and-
THE HONOURABLE CHRISTINE STEWART,
-and-
THE HONOURABLE JANE STEWART,
-and-
THE HONOURABLE JOHN MANLEY,
-and-
THE HONOURABLE DAVID M. COLLENETTE,
-and-
THE HONOURABLE GUY CHEVRETTE (NOW THE HONOURABLE JACQUES BRASSARD), in his capacity as Minister of Natural Resources,
-and-
LA SOCIÉTÉ DE DÉVELOPPEMENT DE LA BAIE JAMES,
- and -
REXFOR,
-and-
DOMTAR INC.,
-and-
PRODUITS FORESTIERS DONOHUE INC. (which includes the company formerly known as Produits Forestiers Saucier Inc.),
-and-
BARRETTE-CHAPAIS LTÉE,
-and-
TEMBEC INC.,
-and-
LES CHANTIERS DE CHIBOUGAMAU LTÉE,
-and-
NORMICK-PERRON INC.,
-and-
LES INDUSTRIES NORBORD INC.,
-and-

ABITIBI-CONSOLIDATED INC. (formerly known as Stone-Consolidated Corporation and as Abitibi-Price and as Consolidated Bathurst),
-and-
MATÉRIAUX BLANCHET INC.,
-and-
SCIERIE AMOS INC.,
-and-
SCIERIE GALLICHAN INC.,
-and-
FILIFOR INC.,
-and-
IPB INTERNATIONAL INC.,
-and-
SCIERIE LANDRIENNE INC.,
-and-
BOIS KMS (GMI) LTÉE,
-and-
FOURNITURES MINIÈRES SIMARD INC.,
-and-
SCIERIE SENCO LTÉE,
-and-
PRODUITS FORESTIERS ALLIANCE INC.
-and-
OPTIBOIS INC. (formerly known as 2541-3998 QUÉBEC INC. (PRÉCIBOIS)),
-and-
PANNEAUX CHAMBORD INC.,
-and-
KRUGER INC.,
-and-
LE GROUPE FOREX INC.,
-and-
FOREX INC.,
-and-
BISSON ET BISSON INC.,
-and-
HOWARD - BIENVENUE INC.,
-and-
COMPAGNIE INTERNATIONALE DE PAPIER DU CANADA,

Defendants (Mis-en-cause except for Respondents)

-AND-

DOMTAR INC.,
-and-
PRODUITS FORESTIERS DONOHUE INC. (which includes the company formerly known as Produits Forestiers Saucier Inc.),
-and-
BARRETTE-CHAPAIS LTÉE,
-and-
TEMBEC INC.,
-and-

LES CHANTIERS DE CHIBOUGAMAU LTÉE,
-and-
LES INDUSTRIES NORBORD INC.,
-and-
ABITIBI-CONSOLIDATED INC. (formerly known as Stone-Consolidated Corporation and as Abitibi-Price and as Consolidated Bathurst),
-and-
MATÉRIAUX BLANCHET INC.,
-and-
SCIERIE AMOS INC.,
-and-
SCIERIE GALLICHAN INC.,
-and-
IPB INTERNATIONAL INC.,
-and-
SCIERIE LANDRIENNE INC.,
-and-
BOIS KMS (GMI) LTÉE,
-and-
FOURNITURES MINIÈRES SIMARD INC.,
-and-
PRODUITS FORESTIERS ALLIANCE INC.
-and-
PANNEAUX CHAMBORD INC.,
-and-
KRUGER INC.,

Defendants-**RESPONDENTS**

MOTION FOR AN INTERLOCUTORY INJUNCTION AGAINST RESPONDENTS DOMTAR INC., PRODUITS FORESTIERS DONOHUE INC., BARRETTE-CHAPAIS LTÉE, TEMBEC INC., LES CHANTIERS CHIBOUGAMAU LTÉE, LES INDUSTRIES NORBORD INC., ABITIBI-CONSOLIDATED INC., MATÉRIAUX BLANCHET INC., SCIERIE AMOS INC., SCIERIE GALLICHAN INC., IPB INTERNATIONAL INC., SCIERIE LANDRIENNE INC., BOIS KMS (GMI) LTÉE, FOURNITURES MINIÈRES SIMARD INC., PRODUITS FORESTIERS ALLIANCE INC., PANNEAUX CHAMBORD INC. AND KRUGER INC.

1. Plaintiffs herein, by Motion dated July 6, 1999, have applied for interlocutory injunctions and other provisional remedies in these proceedings against Defendants the provincial and federal administrators under Section (Chapter) 22 of the *James Bay and Northern Québec Agreement* (*JBNQA*), against Defendants the Québec and federal Ministers of the Environment, against Defendant the Minister of Natural Resources (of Québec) and against Defendant the Minister of Indian Affairs and Northern Development, as appears from the record herein.

2. The Motion dated July 6, 1999 seeks inter alia orders of injunction enjoining Defendant Minister of Natural Resources from approving any additional general, five-year

and annual forest management plans and any additional annual permits in Eenou Astchee (Cree Traditional Territory) unless and until such plans and permits respect and take into account Cree (Eenou) use of the land, Cree (Eenou) harvesting activities and Cree (Eenou) rights, implement the principle of truly sustainable yield and implement trust or fiduciary obligations to Plaintiffs.

3. The present Motion and proceedings relate to injunctive relief against Respondent forestry companies to obtain the cessation of forestry operations or activities in certain hunting territories or traplines without the consent of Tallymen Applicants (named in paragraph 50 hereof) and to prevent any additional forestry operations or activities on such hunting territories without such consent.

4. The present Motion and proceedings also seek orders against Respondent forestry companies to submit all forest management plans, forestry operations and forestry activities in Eenou Astchee to the federal and provincial environmental impact assessment and review contemplated by the *JBNQA*, the *Environment Quality Act* and federal legislation and to prevent such Respondents from proceeding with any forestry work in Eenou Astchee unless and until all environmental authorizations have been obtained.

5. Plaintiffs herein, notably the specific Tallymen Applicants mentioned in paragraph 50 (herein the Tallymen Applicants) seek interlocutory injunctive relief and other relief against the following Defendants-Respondents (herein Respondents):

DOMTAR INC.,
PRODUITS FORESTIERS DONOHUE INC.,
BARRETTE-CHAPAIS LTÉE,
TEMBEC INC.,
LES CHANTIERS DE CHIBOUGAMAU LTÉE,
LES INDUSTRIES NORBORD INC.,
ABITIBI-CONSOLIDATED INC.,
MATÉRIAUX BLANCHET INC.,
SCIERIE AMOS INC.,
SCIERIE GALLICHAN INC.,
IPB INTERNATIONAL INC.,
SCIERIE LANDRIENNE INC.,
BOIS KMS (GMI) LTÉE,
FOURNITURES MINIÈRES SIMARD INC.,
PRODUITS FORESTIERS ALLIANCE INC.,
PANNEAUX CHAMBORD INC.,

KRUGER INC.

6. The extent, planning, type, manner and speed of timber cutting purportedly authorized by Defendant Minister of Natural Resources and the forestry operations and activities of Respondents described herein have now reached a point where they threaten and compromise Eenou Astchee, Cree (Eenou) use of the land and natural resources, Cree (Eenou) harvesting activities, Cree (Eenou) customs, traditions and practices and Cree (Eenou) subsistence activities, jeopardize the right of the Crees (Eenouch) to their way of life, prejudice significantly the Tallymen Applicants, whose hunting territories are systematically being destroyed as well as the children of such Tallymen Applicants, impair and reduce the rights of Applicants under the *JBNQA* (as well as the aboriginal rights of Applicants), threaten the existence of the Eenou as a hunting and gathering society, the wildlife resources on which the Eenou depend and the boreal forest and environment of Eenou Astchee. The foregoing applies to a critical degree in respect to the Tallymen Applicants and the traplines described in paragraph 50 hereof.

7. All of Respondent forestry companies' activities and actions in Eenou Astchee are inconsistent with and breach the aboriginal and treaty rights of the Tallymen Applicants, the provisions of the *JBNQA*, and sections 25 and 35 of the *Constitution Act, 1982*.

8. The territory contemplated by these proceedings is part of the Cree traditional territory (Eenou Astchee). It comprises basically that part of Eenou Astchee which is contemplated by the *JBNQA* below 51° 30' of latitude north to the southern limits of the Cree traplines as well as certain Mistissini and Oujé-Bougoumou traplines (herein the Territory). This Territory includes the areas where forest management plans are to be submitted shortly for approval by Defendant Minister of Natural Resources.

9. Forestry operations and activities in the hunting territories described in paragraph 50 will cause irreparable damages to the ecology and wildlife habitat thereof and the use and occupation of the land and harvesting and other activities of the Tallymen Applicants and such forestry operations and activities should be restrained.

10. Individual Plaintiffs, Plaintiffs the Cree Nations of Waswanipi and Mistissini and the Nemaska and Waskaganish First Nations and the Oujé-Bougoumou Cree Nation form part of the Cree Nation which is an organized society or Indian Nation with its own language, institutions, culture and practices, customs and traditions integral to a distinctive culture and a particular way of life and which has continuously since time immemorial or at least since prior to the assertion of European sovereignty or any colonization, occupied,

used and possessed respectively various parts of Eenou Astchee described in paragraph 15 of the Declaration.

11. Tallymen Applicants and the other individual Plaintiffs and Plaintiffs the Cree Nations of Waswanipi and Mistissini and the Nemaska and Waskaganish First Nations and the Oujé-Bougoumou Cree Nation all have and have exercised aboriginal rights and have since time immemorial carried out activities which are elements of practices, customs or traditions integral to the distinctive culture of the Cree Nation, the James Bay Crees and the components thereof, including in respect to the use of the forest and forestry resources, over, in and under all of their traditional lands (Eenou Astchee) described in paragraph 15 of the Declaration.

12. In addition, those Plaintiffs, with the exception of Plaintiffs Chief Abel Bosum, the Oujé-Bougoumou Cree Nation and the members thereof, also have and have exercised treaty rights pursuant to the *JBNQA*.

13. Plaintiffs and their ancestors have continuously inhabited, used and occupied their traditional lands (Eenou Astchee) according to unique Cree practices, customs or traditions and in accordance with a particular way of life which includes hunting, fishing and trapping (harvesting) as a very significant element; they have made use of the natural resources of Eenou Astchee, including the forest, the trees, the timber, wood, by-products of these and all the associated undergrowth and vegetation, have obtained their livelihood and subsistence from Eenou Astchee and the natural resources thereof, have continuously possessed, controlled and managed and possess, control and manage Eenou Astchee and have identified and named all significant geographical places and features in Eenou Astchee.

14. Since well before European contact, Plaintiffs, including Applicants, and their ancestors have:

a) obtained their livelihood, subsisted and developed as a society and a people in and from Eenou Astchee, including the natural resources thereof, which comprise the forestry resources;

b) used and enjoyed the natural resources of Eenou Astchee and made use of its fruits and produce, including wood for shelter, for fuel, for canoes and for hunting and trapping equipment;

c) hunted, trapped and fished (harvested) throughout Eenou Astchee which activities depended upon maintenance of the forest and its habitat potential;

d) carried on, evolved and developed, according to their own values and priorities, their particular way of life in Eenou Astchee;

e) economically benefited from Eenou Astchee;

f) enjoyed an adequate land and resource base;

g) used the rivers and other waterbodies for their traditional activities, including transportation and sustenance;

h) generally used and shared and participated meaningfully and effectively in the use and management of Eenou Astchee and the natural resources thereof;

i) carried on and developed their spiritual and cultural practices in Eenou Astchee;

j) continuously enjoyed and exercised their unique concept of the land and their special relationship with the land;

k) managed and functioned in the Cree (Eenou) hunting territory system;

l) survived as a people on, and to a significant degree because of the land;

m) acted as protectors and stewards of the land and the environment and the animals; and

n) acted as conservation managers of the land and the animals,

15. The Crees (Eenouch) allocate among themselves parcels of land as hunting territories under the responsibility of acknowledged leaders or Ndoho Ouchimauch. This Cree (Eenou) hunting territory system is a unique aboriginal land tenure system historically implemented and maintained by the Eenouch over all of Eenou Astchee. The Cree (Eenou) hunting territory system is also integral to the culture, way of life, livelihood, practices, customs and traditions of the James Bay Crees and is recognized by the *James Bay and Northern Québec Agreement* and related legislation.

16. Cree Ndoho Ouchimauch, such as the individual Tallymen Applicants identified in paragraph 50, have historically been and are presently acknowledged by the members of the Cree communities as being responsible for the protection and management of the natural resources, including forestry resources, as well as for the preservation and maintenance of the wildlife and habitats in their hunting territories (also known as traplines) and for the supervision of harvesting activities, and with their families depend on their hunting territories for their livelihood and economic subsistence, for their culture and their spiritual life, and for the continuation of the Cree way of life.

17. The Territory is in fact divided into hunting territories actively used by the Crees (Eenouch) and most of these territories appear more fully from the map already produced as Exhibit P-1 with the Declaration and entitled "Forest Timber Supply & Management Agreements and James Bay Cree Traplines" by Robert Beaulieu, dated April 15, 1995. This hunting territory system is the original and prevailing "land use" plan of the territory contemplated by the *JBNQA*. Each hunting territory or trapline constitutes a distinct and independent territorial unit for all land use purposes, including the application of the principle of sustainable yield for forestry management purposes.

18. The forest is essential for the continuation of the Cree (Eenou) way of life. The health and maintenance of the forest are central to the viability of Cree (Eenou) use of Eenou Astchee and notably to the exercise of the activities described in paragraph 14 hereof. The forest is vital for the habitat, food and shelter of the wildlife resources on which Applicants depend.

19. The forest is also vital for the preservation of the cultural and economic traditions of the Crees (Eenouch) and has enabled Applicants and their ancestors to survive off the land in a unique way, to remain a particular hunting and gathering People and to maintain a special way of life and a distinct spiritual relationship with the land.

20. The forest that is the subject of these proceedings is a northern boreal forest with unique characteristics. It differs in many aspects from Québec's southern commercial forests. In comparison to those commercial stands, the northern boreal forest:

a. has soils that are thinner, colder and more fragile;

b. supports a limited number of tree species;

c. has a shorter growing season and more severe winter weather conditions including colder temperatures and greater snowfall;

d. takes a much longer period of time to regenerate a viable new forest following disturbances such as fire and logging;

e. has a slower rate of growth of all tree species which therefore take much longer to reach maturity;

f. has smaller tree height and diameter at all ages, including at maturity;

g. has a lower total volume of timber per hectare;

h. supports much more fragile terrestrial and watercourse ecosystems.

21. The northern boreal forest provides critically important habitat for many species of wildlife upon which the Applicants depend, including moose, caribou, bears, lynx, marten, otter, beaver, waterfowl and small game. The length and severity of the northern winter increase the importance of the sheltering capacity of the northern boreal forest and large areas of intact old growth forest are essential for the continued existence of marten, moose and woodlands caribou.

22. The forestry activities that are the subject of these proceedings are carried out without due regard for the Crees (Eenouch) who inhabit and use the northern boreal forest and without due regard for the unique ecological qualities of the northern boreal forest. No environmental impact assessment is undertaken prior to the approval of forest management plans or the commencement of logging and other activities.

23. The Respondent Minister of Natural Resources and the forest industry have collected incomplete and inadequate site specific social and ecological information where such information has been collected. Little or no consideration is given to the cumulative effects of numerous cut blocks or of the cumulative effects of forestry activities with other development and non-Native activity in the forest.

24. Generally, logging in Eenou Astchee is undertaken by clear cutting the forest which dramatically changes the forest landscape and has immediate and far reaching effects on the Crees (Eenouch), soils, water, riparian values and the habitat of wildlife resources upon which the Applicants depend.

25. In contrast to the methods employed by the Defendant Minister of Natural Resources and Respondents, at a minimum state of the art forestry in northern boreal forests:

a) must be based on an ecosystem approach which requires gathering site specific social and ecological data and preparing all plans based on that data;

b) must place the principle of conservation of all forest resources at the forefront of all planning and decision making and must subject any timber harvesting to a lower priority than Cree (Eenou) use and conservation;

c) must ensure that sustainable development is a primary management goal and must apply sustainability to all forest values;

d) must assess forest development in light of its individual effect on the Eenou and on the environment and in light of its cumulative effects on Eenou society, Eenou use and on the environment in conjunction with all other resource exploitation.

26. Prior to and at the time of the execution of the *James Bay and Northern Québec Agreement* in 1975, most of Eenou Astchee did not contain and was not considered by governments and the forestry companies as containing sufficient quantities of timber to warrant forestry exploitation on a large scale or anything close to the levels of forestry exploitation presently being carried out in Eenou Astchee. Furthermore, the cutting which had occurred by 1975 was in the southern part of Eenou Astchee basically below the 50th parallel of latitude and was carried out primarily on a labour intensive basis.

27. At the time of the Agreement-in-Principle of November 15, 1974 and at the time of the execution of the *JBNQA*, the parties thereto, including Tallymen Applicants and their predecessors in title, understood that any forestry activities and operations in Eenou Astchee would be controlled and planned and would respect Cree priority use of the land. Any forestry activities were thus to be made compatible and reconcilable with Cree use of the land, Cree activities and the Cree traditional way of life.

28. The *JBNQA* has as a fundamental purpose and provides for, and the parties thereto intended, that the way of life, culture, customs, practices, values and traditions of the Crees (Eenouch) would continue and be protected through the *JBNQA*.

29. The *JBNQA* is a treaty, the spirit and intent and fundamental purpose of which was to ensure the continuation and guarantee of the way of life, culture, values and traditions of the James Bay Crees (Eenouch) while providing for some sharing of certain natural resources in conformity with a fully implemented *JBNQA* and in accordance with the guiding principles thereof.

30. The premises on which Cree consent to the *JBNQA* was given, and without which the James Bay Crees (Eenouch) would not have executed it, were that the James Bay Crees (Eenouch) could indefinitely continue, if they so wished, their traditional way of life, that the James Bay Crees (Eenouch) retained their Aboriginal rights, that they were vested with treaty rights in respect to the land and forestry and other natural resources, and that the natural resources and habitat essential for these purposes would continue to be available to the James Bay Crees (Eenouch).

31. The aboriginal rights of the James Bay Crees (Eenouch), including Applicants, in respect to the use of the land and all natural resources were recognized and confirmed by and partially incorporated in the *JBNQA*.

32. Various sections of the *JBNQA*, and especially sections 2, 4, 5, 22, 24, 28 and 30 thereof, recognize, confirm and provide for Cree (Eenou) harvesting rights and use of the land in the territory contemplated by the *JBNQA*.

33. Both the Agreement-in-Principle of November 15, 1974 and the *JBNQA* of November 11, 1975 made the carrying out of any forestry operations in Eenou Astchee conditional upon such operations being or being made compatible with Cree rights and interests and subject to the continuation and guarantee of the way of life, culture, values and traditions of the James Bay Crees, including Tallymen Applicants.

34. Cree use of the land and forestry and other natural resources has and takes priority over any use of the land by Defendants and by Respondents; Applicants, including Tallymen Applicants, have priority use of the forest and the right to sufficient and appropriate habitat to ensure the sustainable existence of fur-bearing animals and other species of wildlife in Eenou Astchee.

35. Applicants, including Tallymen Applicants, have had and have exercised at all relevant times constitutionalized aboriginal rights and (with the exception of Oujé-Bougoumou Tallymen Applicants) treaty rights, on a collective and on an individual basis, in respect to Eenou Astchee and the forestry and other natural resources thereof which include the priority use and benefit of such land and resources and which take precedence

over any Québec or federal legislation and any rights of Defendants, including Respondents, in regard to such land and resources.

36. After 1975, in the light of the *James Bay and Northern Québec Agreement* and related legislation, the continued existence of Cree aboriginal and treaty rights, land use measures, including legislation, the committees and mechanisms established under the *James Bay and Northern Québec Agreement* and various representations and submissions of Cree Plaintiffs, Plaintiffs strived for and expected that an accommodation could and would be reached which would enable Cree traditional activities to continue on a sustainable basis even in areas where forestry operations took place, primarily through the means of selective and planned cutting.

37. Despite the instruments, rights and efforts described in the immediately preceding paragraph and the protests of Plaintiffs, Defendant AGQ and certain of the Respondent corporations increased forestry operations in Eenou Astchee, extensively used clear cutting and caused extensive irreparable damage to part of Eenou Astchee and several of the traplines of Tallymen Applicants and particularly the traplines of members of Plaintiffs the Waswanipi Cree Nation, the Cree Nation of Mistissini and the Oujé-Bougoumou Cree Nation.

38. Subsequent to the *James Bay and Northern Québec Agreement*, Defendant the AGQ began to make excessive wood supply commitments to certain of Respondent companies which, in a large measure, caused the construction and operation of several big sawmills in and near Cree territory which became heavily dependant upon the supply of wood from Eenou Astchee, which supply could not be provided on a sustainable yield basis and the plans for which supply exceeded even reasonable allowable harvest calculations.

39. The new *Forest Act* basically changed the system from an alleged sustainable forest system to a wood supply system.

40. The new *Forest Act* and CAAF system and the implementation thereof in Eenou Astchee are environmentally unsound, make sustainable development impossible, promote the destruction or at least the despoliation of the forest, make inevitable environmental and social damage, put at risk the entire Northern environment, impede regeneration, make land use for forestry purposes the monopoly or at least the priority, prevent traditional activities from being carried out, violate the principles of land use planning and breach the aboriginal and treaty rights of Applicants and are against the public interest.

41. The operations of the forestry companies have breached the rights of Applicants and have had as a consequence such destruction, ruin, damages and risks, as described herein, that Cree society, the Cree way of life, wildlife resources and the forest of Eenou Astchee are now immediately threatened, the rights of the Crees are compromised and the promises of the *JBNQA* are undermined.

42. The viability of Eenou Astchee for Cree traditional uses and activities is now in jeopardy and further planned cutting puts Cree Plaintiffs, particularly Tallymen Applicants, in a situation which imperils the carrying on of their traditional activities, the Cree way of life and the use by the Crees of their traditional territory in accordance with their culture, traditions, practices, way of life, institutions, spiritual practices, compromises Cree society, breaches Cree rights and guarantees, thwarts the principles of the *James Bay and Northern Québec Agreement* and the rights of Plaintiffs thereunder and constitutes irremediable damage and severe disruption to the environment and natural resources of Northern Québec.

43. Each of the individual Tallymen Applicants described in paragraph 50 have carried out the activities described in paragraphs 13 to 16 and have used the land and the resources as described in those paragraphs.

44. In addition to such activities, each of the Tallymen Applicants carries out harvesting activities, including hunting, fishing and trapping, within their traplines and depend upon such lands for their livelihood, subsistence and for the practice of their traditional way of life, including the practices, customs and traditions integral to the distinctive culture of the Cree Nation.

45. The respective Tallymen Applicants also exercise in their traplines the responsibilities of tallymen described herein, such as in paragraphs 15 and 16 hereof, to the extent physically possible and to the best of their ability.

46. The exercise of the rights of Tallymen Applicants described herein and particularly the exercise of the right to hunt, fish and trap (harvest) are highly dependant on the protection of wildlife, wildlife habitat, and forests.

47. The *Forest Act*, the regulations thereunder, the related 25 and 5 year plans and the CAAFs listed in Exhibit P-2 with the Declaration all substantially breach and have breached the *JBNQA* and Tallymen Applicants' aboriginal and treaty rights and are unconstitutional, inoperative or inapplicable to Cree Category II lands and to Category III lands by virtue of section 91(24) of the *Constitution Act, 1867* and the rights of Tallymen Applicants.

48. The forestry operations and activities of Respondent forestry companies in Eenou Astchee and in Applicants' traplines have included and will include, if not enjoined,

a) the removal of trees, vegetation and soil,

b) the construction of roads and camps,

c) the use of heavy equipment,

d) significant work forces,

e) extensive clear-cutting, cutting and logging activities,

f) the destruction of wildlife habitat.

49. The forestry operations and activities of Respondent forestry companies in Eenou Astchee and particularly in Applicants' traplines

a) have detrimentally affected and will critically jeopardize the wildlife habitats of Eenou Astchee and Applicants' traplines,

b) have jeopardized and will critically jeopardize the wildlife resources therein,

c) have diminished and will diminish to a crucial point such wildlife resources,

d) have destroyed and will destroy the habitats of fur-bearing animals,

e) have reduced and will further reduce the moose population to below levels of sustainability,

f) have ruined and will continue to ruin spawning areas of fish,

g) have put at risk the fish population and will crucially jeopardize fish species,

h) have depleted and will virtually eliminate the subsistence wildlife resources upon which Plaintiffs depend or which they use for their food and livelihood,

i) have reduced and will reduce to an unviable state the harvesting potential and harvesting of Plaintiffs and Applicants,

j) have caused negative changes to the ecology and environment of Eenou Astchee and will cause further irreversible disturbance thereto,

k) have negatively affected and will render ineffective and meaningless Plaintiffs' and Applicants' use of the land and resources,

l) have reduced the land and resource base of Plaintiffs respecting their harvesting, practices, customs and traditions,

m) have endangered and will further imperil the health of Plaintiffs and Applicants,

n) have compromised and will render ineffectual the exercise by Plaintiffs and Applicants of their aboriginal and treaty rights to the use and enjoyment of Eenou Astchee and the natural resources, to harvesting and to the exercise of Cree practices, customs and traditions integral to or relating to a distinctive and a particular way of life, and

o) have seriously altered and disrupted and will ruin or significantly compromise the way of life of Applicants on their traplines.

50. Set out in the following table are:

a) the designation of the traplines,

b) the Tallymen Applicants (of the Waswanipi Cree Nation, the Mistissini Cree Nation, the Nemaska Cree Nation, the Oujé-Bougoumou Cree Nation and the Waskaganish Cree Nation) with particular rights and interests in such traplines,

c) the Respondent forestry companies which are engaged in or carrying out forestry operations and activities in such traplines as well as elsewhere in Eenou Astchee:

A. WASWANIPI TRAPLINES

TRAPLINE NO.	TALLYMAN	DEFENDANT FORESTRY COMPANY HOLDER OF CAAFS
W-04	Louie John Ottereyes	Domtar Inc. Produits forestiers Donohue Inc. Les Industries Norbord Inc. Matériaux Blanchet Inc. Scierie Amos Inc. Scierie Gallichan Inc. IPB International Inc.
W-04A	Allan Gull	Domtar Inc. Les Industries Norbord Inc. Scierie Amos Inc. Scierie Gallichan Inc. Scierie Landrienne Inc.
W-05A	Allan Saganash Sr.	Produits forestiers Donohue Inc. Les Industries Norbord Inc. Scierie Amos Inc. Scierie Gallichan Inc.
W-05D	Malcolm Saganash	Produits forestiers Donohue Inc. Tembec Inc. Kruger Inc. Domtar Inc. Les Industries Norbord Inc. Matériaux Blanchet Inc. Scierie Amos Inc. Scierie Gallichan Inc. Scierie Landrienne Inc. Les Chantiers de Chibougamau Ltée
W-07	Malcolm Gull	Domtar Inc.

		Les Industies Norbord Inc.
		Scierie Amos Inc.
		Scierie Gallichan Inc.
		IPB International Inc.
W-09	Philip Saganash	Domtar Inc.
		Scierie Landrienne Inc.
		Les Industries Norbord Inc.
		Matériaux Blanchet Inc.
W-10	Joseph Neeposh	Domtar Inc.
		Les Industries Norbord Inc.
		Scierie Amos Inc.
		Les Chantiers de Chibougamau Ltée
		Kruger Inc.

B. MISTISSINI TRAPLINES

TRAPLINE NO.	TALLYMAN	DEFENDANT FORESTRY COMPANY HOLDER OF CAAFS
M-40	Simeon Petawabano	Barrette-Chapais Ltée
		Kruger Inc.
		Les Chantiers de Chibougamau Ltée
		Bois KMS (GMI) Ltée
		Fournitures Minières Simard Inc.
M-41	Allan Edward	Barrette-Chapais Ltée
		Bois KMS (GMI) Ltée
		Fournitures ministères Simard Inc.
M-45	François Mianscum and Abel Mianscum	Kruger Inc.
		Les Chantiers Chibougamau Ltée
		Barrette-Chapais Ltée
		Bois KMS (GMI) Ltée
		Fournitures Minières Simard Inc.
M-45A	David Mianscum	Kruger Inc.
		Les Chantiers Chibougamau Ltée

		Barrette-Chapais Ltée Bois KMS (GMI) Ltée Fournitures Minières Simard
M-46	Sydney Rabbitskin	Les Chantiers Chibougamau Ltée Kruger Inc.
M-46A	Charlie Coon Blacksmith	Les Chantiers Chibougamau Ltée Produits forestiers Donohue Inc. Panneaux Chambord Inc. Produits Forestiers Alliance Kruger Inc.
M-51A	Charlie Etapp and Isaac Etapp and Abraham Etapp	Les Chantiers Chibougamau Ltée Produits forestiers Donohue Inc. Panneaux Chambord Inc. Produits forestiers Alliance Inc. Kruger Inc.

C. NEMASKA TRAPLINES

TRAPLINE NO.	TALLYMAN	DEFENDANT FORESTRY COMPANY HOLDER OF CAAFS
N-20	Abel Jolly	Domtar Inc. Produits forestiers Donohue Inc. Scierie Landrienne Industries Norbord Inc. Matériaux Blanchet Inc. Scierie Gallichan Inc. Tembec Inc. Scierie Amos Inc.
N-21	Lawrence Neeposh	Domtar Inc. Industries Norbord Inc.

D. OUJÉ-BOUGOUMOU TRAPLINES

TRAPLINE NO.	TALLYMAN	DEFENDANT FORESTRY COMPANY HOLDER OF CAAFS
O-48B	George Bosum and Robert Shecapio-Blacksmith	Barrette-Chapais Ltée Bois KMS (GMI) Ltée Fournitures Minières Simard Inc.
O-53	Charlie Bosum	Barrette-Chapais Ltée Bois KMS (GMI) Ltée Fournitures minières Simard Inc.
O-54	Freddy Capissisit	Barrette-Chapais Ltée Bois KMS (GMI) Ltée Fourniture Minière Simard Inc.
O-58	David Mianscum and Jimmy Mianscum	Kruger Inc. Les Chantiers de Chibougamau Ltée Barrette-Chapais Ltée Bois KMS (GMI) Ltée Fournitures Minières Simard Inc. Les Industries Norbord Inc.
O-61	George Shecapio-Blacksmith	Abitibi-Consolidated Inc. Barrette-Chapais Ltée Panneaux Chambord Inc. Bois KMS (GMI) Ltée Fournitures Minières Simard Inc. Les Industries Norbord Inc.

E. WASKAGANISH TRAPLINES

TRAPLINE NO.	TALLYMAN	DEFENDANT FORESTRY COMPANY HOLDER OF CAAFS
A-04	Bob Moar, Sr.	Les Industries Norbord Inc. Tembec Inc. IPB International Inc.
N-05	Lawrence Katapatuk	Domtar Inc. Les Industries Norbord Inc. Scierie Amos Inc. Scierie Gallichan Inc.
N-08	Charlie Diamond	Les Industries Norbord Inc. Tembec Inc. IPB International Inc. Scierie Landrienne Inc. Domtar Inc. Produits Forestiers Donohue Inc. Scierie Amos Inc.
N-10	Billy Shecapio and George Shecapio	Les Industries Norbord Inc.

51. The following Respondent companies are alleged holders of CAAFs in part of Eenou Astchee:

- Les Industries Norbord Inc. (common areas 82-85B, 82-85C, 83- 87N, 84-20, 85-20, 86-01, 86-03S, 86-10, 86-20, 86-21, 86-22, 86-23, 86-24, 87-04, 87-20);
- Domtar Inc. (common areas 83-87N, 86-20);
- Scierie Amos Inc. (common areas 83-87N, 84-20, 86-10, 86-20, 86-21, 86-24, 87-04, 87-20);
- Scierie Gallichan Inc. (common areas 83-87N, 86-01, 86-10, 86-20, 86-21, 86-24, 87-20);
- IPB International Inc. (common areas 83-87N, 84-20, 85-20, 86-01, 86-03S, 86-23, 86-24, 87-04, 87-20);
- Tembec (common areas 82-85B, 85-20, 86-01, 86-10);

- Scierie Landrienne (common areas 86-01, 86-03S, 86-03N, 86-10, 87-04, 87-20);
- Matériaux Blanchet Inc. (common areas 86-01, 86-10, 86-22, 86- 23);
- Produits forestiers Donohue (common areas 84-20, 86-21, 87-20);
- Scierie Senco (common areas 84-20, 86-01, 86-23, 87-04);
- Optibois (common are 87-04).
- Produits forestiers Donohue Inc. (common area 25-03);
- Abitibi-Consolidated Inc. (common area 26-04);
- Barrette-Chapais Lté (common areas 26-04 and 26-20);
- Les Chantiers de Chibougamau Ltée (common area 26-05);
- Bois KMS (GMI) Ltée (common area 26-20);
- Fournitures minières Simard Inc. (common area 26-20);
- Produits Forestiers Alliance Inc. (common areas 25-02 and 25-03);
- Panneaux Chambord Inc. (common areas 25-02, 25-03 and 26-04);
- Kruger Inc. (common area 26-05).
- Panneaux Chambord Inc. (common area 42-01);
- Produits forestiers Donohue (common area 42-01)

52. Maps of various traplines described in the immediately preceding paragraphs showing these traplines and certain characteristics of the traplines are hereto attached as Schedule "A" hereof.

53. To date, very productive portions of the traplines have been removed by the forestry operations of Respondent forestry companies and, in some cases, by wildfire alone or in combination with forestry operations. Additional cutting will render such traplines unusable for harvesting purposes or at great risk for such purposes. By 1996, at least the following proportions of the productive areas of the following traplines have been removed:

W-04 :	16%	M-51A:	43%
W-04A:	19%	N-20 :	39%
W-05A:	15%	N-21 :	31%
W-05D:	35%	O-48B:	37%
W-07 :	20%	O-53 :	31%
W-09 :	13%	O-54 :	35%
W-10 :	54%	O-57 :	87%
M-40 :	58%	O-58 :	49%
M-41 :	23%	O-61 :	34%
M-45 :	64%	A-04 :	10%

M-46 : 35%

N-08 : 14%

N-10 : 40%

54. To date, wooded portions of the Cree (Eenou) hunting territories which are highly productive for wildlife have been removed by the forestry activities and operations of Defendant companies, as appears from a copy of a map entitled Forest Disturbance within Eeyou Astchee as of 1996 and proposed forestry activities for 1997-1999 communicated to the Respondents as Exhibit **R-22**, a copy of a map entitled *Forestry Road Network in Eeyou Estchee (Partial coverage)* dated October 1997 communicated to the Respondents as Exhibit **R-23** and a copy of a map untitled of forestry roads prepared by Robert Beaulieu and communicated to the Respondents as Exhibit **R-120** (the reference to exhibits in this paragraph is to the exhibits related to the Motion dated July 6, 1999 herein and supporting affidavits).

Additional continued and sustained cutting of this nature and at this rate:

a) will render such Cree (Eenou) hunting territories or substantial portions thereof unusable for harvesting purposes,

b) will significantly jeopardize Cree (Eenou) use of the land,

c) will compromise Cree (Eenou) traditional activities and Cree (Eenou) rights,

d) will prejudice the existence of the Eenouch as a hunting and gathering society,

e) will impair their ability to earn a livelihood and practice their way of life, culture, values and traditions and

f) will impede the effective uses of the land by the Crees (Eenouch) described in paragraph 14 hereof and

g) will irreparably damage Tallymen Applicants and their particular traplines in the manner and to the extent described in sub-paragraphs a) to f) above.

55. The forestry operations and activities of Respondents have breached the aboriginal rights of Tallymen Applicants and, except in the case of the Oujé-Bougoumou Cree Nation

and the members thereof, the treaty rights of Tallymen Applicants as well. Such forestry operations have already been carried out to the detriment of Tallymen Applicants, have caused serious and irreparable injury to them and an interlocutory injunction is necessary in order to avoid further serious or irreparable injury to Tallymen Applicants or to prevent a factual or legal situation of such a nature as to render the final judgment ineffectual. Moreover, such forestry operations and activities do not meet the requirements for sustainable development on either a trapline or territorial basis nor are they consistent with ecosystem-based forestry management

56. The *Forest Act* provides for no special measures relating to Applicants, the *JBNQA* or Eenou Astchee (except for Category I lands as defined in the *JBNQA*), does not require that the rights and interests of Applicants be taken into account and breaches the *JBNQA* and the Aboriginal and treaty rights of Applicants. Applicants contest the constitutional applicability to them of the *Forest Act* and regulations thereunder and the allegations and conclusions herein are made under reserve of and without prejudice to that position.

57. The aboriginal and treaty rights of Applicants include the priority use and benefit of Eenou Astchee and the traplines and resources thereof and take precedence over any alleged rights or authorizations of Defendants and notably Respondent forestry companies respecting the land, the forest, the habitat and the animals in Eenou Astchee and more particularly in the traplines referred to herein.

58. In further breach of their aboriginal and treaty rights, Tallymen Applicants are not meaningfully consulted nor do they participate in the decisions of Respondents respecting the execution and implementation of the CAAFs.

59. Respondents by the construction and operation of all forestry roads, without Cree consent in the traplines described in paragraph 50, have increased pressures on the wildlife through greater and uncontrolled access of non-native sports hunters and fishermen without due regard for S. 24 of the *JBNQA*.

60. Moreover, various Respondent forestry companies have constructed a number of forestry camps and/or base camps for their operations along these roads, causing additional damages to Tallymen Applicants.

61. Despite the severe impacts upon and damages to the Applicants, their rights and activities and to the Territory, with a few isolated exceptions, no forest management plans and no CAAFs, forestry permits, operations and activities of Respondents in the Territory

have been subjected to the required environmental and social impact assessment and review under the *JBNQA*, the *C.E.A Act* and the *Environment Quality Act*.

62. Respondents have also breached the *JBNQA*, the *EQA Act* and *CEA Act* in that their forestry plans, projects and operations and activities in Eenou Astchee, subsequent to November 11, 1975, have not been made subject to any environmental and social impact assessment and review, and the impacts thereof on Applicants and on the wildlife resources of Eenou Astchee have not been reasonably minimized, with a few isolated exceptions.

63. None of the Respondent forestry companies has submitted its forestry project descriptions, general, five-year or annual forest management plans, forestry projects, forestry operations or forestry activities to Defendants the Provincial and Federal Administrators or to the Federal or provincial Ministers of the Environment, in further breach of Section 22 of the *JBNQA*, the *EQA Act* and the *CEA Act* subject to a few isolated exceptions. Respondents' forestry operations in Eenou Astchee should not proceed until the completion of such environmental assessment and review processes.

64. In respect to paragraphs 62 and 63 and environmental and social impact assessment and review of forest management plans, permits, operations and activities, Applicants refer to and incorporate the Motion for interlocutory injunctions and other provisional remedies, dated July 6, 1999, and supporting Affidavits and materials filed in the record herein.

65. In addition, present and proposed forestry activities on Eenou Astchee result in the contamination or change in the quality of the environment, which therefore requires a Certificate of Authorization from the Minister of Environment pursuant to section 22 of the *EQA*, which Respondent forestry companies have failed to obtain, and Defendant the AGQ and Defendant the Québec Minister of the Environment have failed to enforce.

66. In addition to the other grounds set forth herein,

a) all CAAFs issued to Respondent forestry companies are null and void as being in violation of the EQA,

b) the forestry activities of Respondents in Eenou Astchee, whether purportedly authorized or not, violate Tallymen Applicants' rights to a healthy environment and to its protection, and to the protection of the living species in it and

Tallymen Applicants seek injunctive relief under section 19.1 of the *EQA*.

67. Subsidiarily, and under strict reserve of and without prejudice to the rights and recourses of Tallymen Applicants mentioned above and to all the arguments raised above and only to the extent constitutionally applicable, forestry operations of Respondent forestry companies and the actions and omissions of Respondent the AGQ in respect thereof within Eenou Astchee violate the provisions of the Québec *Forest Act* and of *An Act respecting the Lands in the Public Domain* and regulations thereunder.

68. Subsidiarily and subject to the constitutional inapplicability of the *Forest Act*, the forestry activities of Respondent forestry companies in Eenou Astchee have been and are carried out in breach of the provisions of the *Forest Act* and regulations thereunder including with respect to environmental protection, preservation of wildlife and ecological habitat and resources, protection of harvesting of wildlife resources and hunting and recreational uses of forests as well as protection of cultural and historic sites.

69. Applicants' rights and the *JBNQA* require that any forestry operations be made compatible with the effective exercise of Cree rights and notably the right to harvest, which Respondents have failed to do.

70. The implementation by the AGQ and Respondent forestry companies of Québec forestry legislation and the activities of Respondent forestry companies constitute and amount to an illegal expropriation or appropriation of Applicants' rights.

71. In 1989 and 1990, Plaintiffs instituted the Grand Chief Matthew Coon Come legal proceedings described in paragraph 1 of the Declaration. Those proceedings relate inter alia to the aboriginal and treaty rights of Plaintiffs respecting natural resources, including forestry resources, and the lack of jurisdiction of the AGQ thereover. These proceedings are pending. They constitute timely and judicial efforts of Plaintiffs to have a judicial determination of their rights.

72. Despite the rights of Plaintiffs and the judicial and other efforts of Applicants and the other Plaintiffs, Respondents have continued and increased forestry cutting and their forestry operations and activities in the traplines described in paragraph 50 and elsewhere in Eenou Astchee without regard to the rights, use of the land and harvesting activities of Applicants and the other Plaintiffs.

73. As a result of Respondents' various breaches and illegal actions and omissions in relation to forestry as described herein, Applicants have suffered and continue to sustain extensive and irreparable damages and prejudice.

74. The damages suffered by Applicants to their customs, traditions, values, way of life, culture, spiritual links to Eenou Astchee and use of and special relationship with their traditional lands and resources are irreparable.

75. Inter alia, the omissions of Respondents, the continuous breach of Tallymen Applicants' rights, the failed attempts by Applicants with Respondent forestry companies to have any forestry operations respect the sustainable yield principle, as well as the absence of concrete implementation and corrective measures in order to give effect to Tallymen Applicants rights have left Tallymen Applicants and the other Applicants with no other effective remedy than to seek redress from this Court.

76. As a result of Respondents' various breaches and illegal actions and omissions in relation to forestry as described in the present Motion, Tallymen Applicants and the other Applicants have suffered and continue to sustain extensive irreparable damages and prejudice.

77. Applicants are entitled to injunctive relief to obtain the cessation of all forestry activities of Respondent forestry companies in the hunting territories described in paragraph 50.

78. All works presently under way and planned by Respondents respecting the traplines or hunting territories described in paragraph 50 are illegal and should be restrained.

79. Subsidiarily, Respondents should be enjoined not to interfere with the exercise of Applicants' rights and in particular their hunting, trapping and fishing rights, and should be enjoined to take the necessary measures to protect the environment.

80. The losses of Applicants described herein, and losses which will be caused to applicants by Respondents if cutting continues, including the continued permanent destruction and alteration of the land and natural resources and the habitat, and the damages to the way of life, culture, traditions, harvesting activities and use of the land also described herein, as well as the damages caused to the constitutional rights of Applicants, cannot be quantified, are not compensable in money and are irreparable.

81. Any damages to Respondents from the granting of an interlocutory injunction will be strictly financial and compensable by monetary damages.

82. Respondents are also successful corporations capable of absorbing any financial losses which may result from the granting of the relief sought herein. They also have forestry interests outside of Eenou Astchee which would not be affected by such relief being granted and they would also be able to carry on forestry activities outside of Eenou Astchee.

83. The public interest favours the respect for the constitutional rights of Applicants, the protection of the boreal forest, at least on a temporary basis, and the carrying out of environmental and social impact assessment and review of forestry operations prior to continuing forestry operations, particularly in the hunting territories described in paragraph 50.

84. The status quo favours the preservation of the forest and habitat especially of the hunting territories mentioned in paragraph 50, in their present natural state.

85. Applicants have used all due diligence in the circumstances, have informed Respondents of their rights and discussed the effects of said forestry operations on them but to no avail.

86. Unless the foregoing illegal acts and works of Respondents are arrested, Applicants' recourses will become illusory and a great injustice will be done to them and their way of life jeopardized.

87. There is no other remedy equally convenient, beneficial and effectual which can save Applicants from suffering continued, great, serious and irreparable loss, injury and damage and protect Applicants' rights than an injunction.

88. The balance of convenience greatly and overwhelmingly favours Applicants.

89. In all the circumstances, Tallymen Applicants and the other Applicants are entitled to injunctive relief to obtain the cessation of all forestry activities of Respondent forestry companies in the traplines described in paragraph 50 hereof and the other relief described in the Conclusions hereof.

WHEREFORE, APPLICANTS PRAY THIS HONOURABLE COURT TO:

A. **ISSUE** interlocutory orders of injunction against Respondent forestry companies, their officers, ministers, directors, employees, agents and servants and those acting in concert with them and those purportedly authorized by them:

i) preventing them from carrying out or engaging in any work relating to forestry activities or proposed forestry activities on the hunting territories or traplines described in paragraph 50 hereof, [redacted] consent of the respective Tallymen Applicants, Applicant Grand Council of the Crees (Eeyou Istchee) and Applicants Grand Chief Matthew Coon Come and the respective Chief of the concerned First Nation;

ii) to immediately cease, desist and refrain from carrying out any works, operations or activities in connection with forestry and proposed forestry work, including any preliminary works, surveys, the construction of exploration camps and forest camps, the construction of any roads, dams, structures, dykes and bridges and connected works on such hunting territories or traplines without the same consent described in i).

B. **SUBSIDIARILY TO A., ISSUE** interlocutory orders of injunction against Respondent forestry companies, their officers, ministers, directors, employees, agents and servants and those acting in concert with them and those purportedly authorized by them preventing them from carrying out or engaging in any work relating to forestry activities or proposed forestry activities on the hunting territories or traplines described in paragraph 50 hereof:

i) unless such work or activities respect the sustainable yield principle of forest management applied on the basis that each trapline constitutes a distinct and independent territorial unit for all land use purposes and unless such work or activities respect ecosystem-based forest management;

ii) unless such work or activities respect and take into account Cree (Eenou) use of the land, Cree (Eenou) harvesting activities and Cree (Eenou) aboriginal and treaty rights.

C. **ISSUE** orders of interlocutory injunction against Respondent forestry companies:

i) to submit all present and proposed forestry activities on the hunting territories or traplines described in paragraph 50 and in Eenou Astchee to federal and provincial

environmental and social impact assessment and review contemplated by the *JBNQA* and the *Environment Quality Act* and federal legislation;

ii) to apply for all applicable environmental authorizations in respect to forestry operations on such hunting territories or traplines and in Eenou Astchee;

iii) **not to proceed with any forestry work**, including the **construction of any road** on such hunting territories or traplines and in Eenou Astchee, unless and until all such applicable environmental authorizations have been obtained.

The whole with costs against Respondents.

MONTRÉAL, this 28th day of July, 1999

O'Reilly Mainville & Associés
Attorneys for Plaintiffs-Applicants

Counsel: Hutchins, Soroka & Dionne

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